



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: HU/03404/2020_P

THE IMMIGRATION ACTS

Decided under Rule 34 without a hearing
On 3 August 2021

Decision sent on:
On 19 August 2021

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Farah Ahmed Ismail
(ANONYMITY ORDER NOT MADE)

Appellant

And

Entry Clearance Officer

Respondent

DECISION

1. By a decision signed on 20 April 2021 (sent to the parties on 26 April 2021), Judge of the First-tier Tribunal Gumsley granted permission to appeal to the Upper Tribunal against a decision of Judge of the First-tier Tribunal M R Oliver who (in a decision promulgated on 11 March 2021) dismissed the appellant's appeal on human rights grounds against a decision of the respondent of 15 January 2020 to refuse her application of 11 November 2019 to settle in the United Kingdom under para 297 of the Immigration Rules with her father, Mr Ahmed Warsame (the "sponsor").
2. On 6 May 2021, the respondent filed a response of the same date under rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the "UT Rules") which stated, inter alia, that the respondent did not oppose the appellant's application for permission and which invited the Upper Tribunal to remit the appeal to the First-tier Tribunal in order for the First-tier Tribunal to determine the appeal with a fresh oral hearing.

3. By a “*Memorandum & Directions*” signed on 30 April 2021 (sent to the parties by email on 24 June 2021, Upper Tribunal Judge Rintoul stated (at para 1) that, in light of the need to take precautions against the spread of Covid-19 and the overriding objective and having regard to the judgment of Fordham J in R (JCWI) v President of the Upper Tribunal [2020] EWHC 3103 (Admin), he had reached the provisional view that it would be appropriate in this case to determine the following questions without a hearing:
 - (a) whether the making of the First-tier Tribunal's decision involved the making of an error of law; and if so
 - (b) whether that decision should be set aside.
4. Judge Rintoul proceeded to give directions which (inter alia) enabled any party who considered that a hearing was necessary to submit reasons for that view within a specified period.
5. By a letter dated 29 June 2021 sent to the Upper Tribunal by an email of the same date, the respondent replied to the directions of Judge Rintoul, stating that, as had been indicated in the Rule 24 response, the respondent did not oppose the appellant's application for permission and that the Upper Tribunal was invited to remit the appeal to the First-tier Tribunal in order for the First-tier Tribunal to determine the appeal with a fresh oral hearing. The letter proceeded to state that the respondent agreed that there was no need for an oral hearing to determine the error of law issue.
6. On 5 July 2021, the Upper Tribunal received an email from the appellant's solicitors which attached a document entitled: “*Heads of Argument in support of remittal for hearing de novo*”. This document did not state whether the appellant objected to the Upper Tribunal deciding questions (a) and (b) identified at para 3 above without a hearing. However, it is clear that the appellant submitted that the decision of Judge Oliver should be set aside in its entirety and that she sought a remittal of the appeal to the First-tier Tribunal for a fresh hearing on the merits.
7. I noted that the respondent had also agreed that the decision of Judge Oliver should be set aside and that the appeal should be remitted to the First-tier Tribunal for a fresh hearing on the merits.
8. I considered very carefully whether the Upper Tribunal should decide questions (a) and (b) identified at para 3 above without a hearing. I considered and applied paras 4 and 5 of the Senior President's "*Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and Upper Tribunal*" (hereafter the "PPD") issued on 19 March 2020 on a pilot basis for a period of six months and extended subsequently for a further six months until 18 March 2021 and rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. I had regard to the decision of Fordham J in R (JCWI) v The President of the Upper Tribunal (Immigration and Asylum Chamber) Fordham J did not find that the PPD was unlawful. Furthermore, the judgment in R (JCWI) did not concern cases in which the parties and the Upper Tribunal were agreed as to the outcome.
9. Having considered the decision of Judge Oliver, the grounds of appeal and the decision of judge Gumsley in granting permission to appeal, I agree with the parties that the decision of Judge Oliver should be set aside. I entirely agree with Judge Gumsley's reasons for granting permission to appeal. Whilst Judge Oliver had recited the evidence in some detail, he erred by failing to give any or any adequate reasons for his findings and for rejecting the case as asserted by the appellant and the sponsor. He also erred by failing to make findings on material issues. I am satisfied that these errors of law were material and that Judge Oliver's decision should be set aside in its entirety save that his summary of the sponsor's oral

evidence, at para 13 of his decision, shall stand as a record of the oral evidence given at the hearing.

10. I also agree with the parties that the appeal should be remitted to the First-tier Tribunal for a fresh hearing on the merits. I am satisfied that this case falls within para 7.2(b) of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal.
11. Accordingly, I am satisfied, having taken into account the PPD, the overriding objective and the judgment in R (JCWI) v The President of the Upper Tribunal (Immigration and Asylum Chamber) and in all of the circumstances, that it is just and appropriate for me to decide questions (a) and (b) identified at para 3 above without a hearing. For the reasons given above, I set aside the decision of Judge Oliver save that para 13 shall stand as a record of the oral evidence given before him and I remit the appeal to the First-tier Tribunal for a fresh hearing on the merits by a judge other than Judge Oliver.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside. This appeal is remitted to the First-tier Tribunal for a fresh hearing on the merits by a judge other than Judge of the First-tier Tribunal M R Oliver.

Upper Tribunal Judge Gill

Date: 3 August 2021

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.