



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

**Appeal Number: UI-2022-003388  
On appeal from HU/53145/2021  
[IA/09628/2021]**

**THE IMMIGRATION ACTS**

**Decision under rule 34  
On 26 September 2022**

**Decision & Reasons Promulgated  
On the 25 October 2022**

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

**MAA SAMBOU JORDAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REASONS**

1. This decision is made without a hearing under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Consequent to the respondent confirming that she does not contest the appeal before the Upper Tribunal, observing the importance of these proceedings to the appellant and being mindful of the overriding objective that requires the Tribunal to deal with cases fairly and justly, I am satisfied that it is just and fair to proceed to consider this matter under rule 34.
2. The appellant seeks leave to remain on human rights (article 8) grounds, relying upon her family and private life.

3. The appellant's appeal was refused by the First-tier Tribunal (Judge of the First-tier Tribunal Juss) by a decision dated 28 June 2022.
4. By lengthy grounds of appeal drafted by Ms. S Hingora, Counsel, the appellant challenges the decision of Judge Juss. Three grounds of appeal are advanced:
  - i) Failure to give adequate reasons as to whether the relationship was genuine and subsisting, and whether the marriage was valid.
  - ii) Misdirection in law: the Judge's assessment of proportionality arguably relies on the assessment under the Immigration Rules as the yardstick from which to assess whether removal would be disproportionate and goes no further in weighing up the scales on either side (balance sheet approach); failure to take into account relevant matters.
  - iii) Procedural fairness.
5. Judge of the First-tier Tribunal Komorowski granted the appellant permission to appeal to this Tribunal by a decision dated 2 August 2022. In his decision Judge Komorowski observed, *inter alia*:
  - '3. In particular, the judge's findings are difficult to identify and the course of reasoning is difficult to understand. The grounds complain no finding is made as to whether the appellant and sponsor are in a genuine and subsisting relationship, and that appears to be correct, but there is a more general lack of clarity about the judge's reasoning. It is arguable that the appellant has not been provided with adequate reasons to explain the outcome, or that the reasons do not demonstrate that the judge has addressed all relevant issues before the tribunal.'
6. By means of a rule 24 response authored by Mr. A Mullen, dated 8 September 2022, the respondent confirmed:
  - '2. The respondent does not oppose the appellant's application for permission to appeal and invites the Tribunal to determine the appeal with a fresh oral hearing to consider whether the appellant's removal would breach the appellant's protected rights under the ECHR/section 6 of the Human Rights Act 1998.
  3. The respondent agrees that there may be material errors of law as described in paragraph 3 of the grant of permission.
7. I understand the respondent's position to be that she does not oppose the appeal to the extent that the matter be considered afresh at a substantive oral hearing, whether upon remittal to the First-tier Tribunal or remaining before this Tribunal.
8. Having considered the First-tier Tribunal decision I note Judge Komorowski's concerns and I am satisfied that he has identified material

errors of law. There is a general lack of clarity in respect of Judge Juss' reasoning, particularly as to whether the appellant and her sponsor - who both attended the hearing and gave evidence - are in a genuine and subsisting relationship.

9. I conclude that the only just and appropriate approach is to set aside the decision of the First-tier Tribunal in its entirety for lack of adequate reasoning, and for no findings of fact to be preserved.
10. Consequent to the identified failure, the only proper course is for the matter to be remitted to the First-tier Tribunal for consideration by any judge other than Judge Juss.

### **Notice of Decision**

11. The decision of the First-tier Tribunal, dated 28 June 2022, involved the making of a material error of law and is set aside pursuant to section 12(2) (a) of the Tribunals, Courts and Enforcement Act 2007.
12. No findings of fact are preserved.
13. The hearing of the appeal is remitted to the First-tier Tribunal sitting at Birmingham, to be heard by any judge other than Judge Juss.

Signed: D. O'Callaghan

**Upper Tribunal Judge O'Callaghan**

Dated: 26 September 2022