



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

**Case No: UI-2022-001389**  
On appeal from: HU/02654/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 18 April 2023**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**AHMED ABDULLAH MAHMOOD**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE ENTRY CLEARANCE OFFICER**  
**PRETORIA**

Respondent

**Representation:**

For the Appellant: Mr John Waithe of Counsel, instructed by Gerald UK Legal Services Ltd

For the Respondent: Mr David Clarke, a Senior Home Office Presenting Officer

**Heard at Field House on 27 February 2023**

**DECISION AND REASONS**

**Introduction**

1. The appellant challenges the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 23 March 2021 to refuse him entry clearance to join his brother, who has been granted refugee status. He is a citizen of Eritrea, living in a camp in Sudan, along with the sponsor's wife.

2. For the reasons set out in this decision, I have come to the conclusion that the right course is to set aside the decision of the First-tier Tribunal and remit it for remaking in the First-tier Tribunal.

### **Procedural matters**

3. **Mode of hearing.** The hearing today took place face to face.

### **Background**

4. The main basis of the appellant's case is that he is the dependant brother of a recognised refugee and that paragraph 319X of the Immigration Rules HC 395 (as amended) entitles him to entry clearance to join his brother here.
5. The First-tier Judge dismissed the appeal in the absence of the appellant, his sponsor brother, or any representation. The sponsor was contacted by telephone and stated that he had not received a notice of hearing. On the invitation of the Home Office Presenting Officer, and in the interests of justice, the First-tier Judge decided that he should continue the hearing.
6. The appellant appealed to the Upper Tribunal.

### **Permission to appeal**

7. Gerald UK Immigration have been instructed since July 2021. The application for permission to appeal was supported by three witness statements from the appellant's sponsor brother Abdulhakeem Abdullah Mahmood, and from Gerald UK Immigration's caseworker, Zeenat Osman Karim, and Geraldine Suresh, the firm's director. They confirm that no notice of hearing was received, either by the sponsor or by Gerald UK Immigration.
8. Permission to appeal to the Upper Tribunal was granted by UTJ Rimington for the following reason:

"In the light of the witness statement from the instructed solicitors it is arguable there was a procedural error in proceeding in the absence of the representative and the sponsor, neither of whom were in attendance and yet were said to have been notified of the hearing (particularly when the appellant had engaged in the process). The notice of hearings state that the hearing may proceed and the appeal be determined in the absence of parties unless there is a satisfactory explanation. It is unsurprising that the appellant did not attend because he is in a camp in Sudan. The grounds assert that there was no contact between the FtT and the representatives at all from the date they went on record in July 2021 which is surprising."

9. There was no Rule 24 Reply on behalf of the respondent.
10. That is the basis on which this appeal came before the Upper Tribunal.

## **Upper Tribunal hearing**

- 11.** The oral and written submissions at the hearing are a matter of record and need not be set out in full here.
- 12.** At the hearing, Mr Clarke for the respondent conceded that there was an error of law in the First-tier Tribunal decision on the basis set out in the grant of permission.

## **Conclusions**

- 13.** On the facts of this appeal, there is no alternative but to set aside the decision of the First-tier Judge and remit the appeal for remaking.
- 14.** The respondent is reminded that the fraternal link has been established by DNA testing.

## **Notice of Decision**

- 15.** For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. The decision in this appeal will be remade in the First-tier Tribunal.

**Judith A J C Gleeson**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 17 April 2023**