



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000580

First-tier Tribunal Nos: HU/55285/2021
IA/13219/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 3rd of November 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

**HIRA AHMAD
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Gering-Hasthrope instructed by Immigration Advice Service (Manchester)

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Heard at Field House on 7 September 2023

DECISION AND REASONS

EXTEMPORE JUDGMENT

1. The Appellant appeals with permission granted in the Upper Tribunal against a decision of the First-tier Tribunal, Judge Curtis, promulgated on 23rd December 2022 following a hearing on 2nd December 2022. The grounds of appeal allege procedural unfairness in that the judge declined to take into account Covid-19 guidance which had not been adduced by the Appellant, yet researched and applied a later version of the guidance, which the Appellant did not rely upon. The grant of the application for permission to appeal in the Upper Tribunal identified that that gives rise to an arguable error of law. Upper Tribunal Judge Smith directed that the Appellant should adduce a copy of the relevant guidance upon which the representatives relied at the First-tier Tribunal. There has been no response from the Appellant's representatives to those directions. The Respondent has attached to the Rule 24 notice a copy of the guidance and the

parties before me have confirmed that that is the guidance which was in operation as at the time of the Respondent's consideration of the Appellant's application. The relevant guidance is dated 5th November 2020 available via the National Archive in [Archived Content] Coronavirus (COVID-19): advice for UK visa applicants and temporary UK residents – GOV.UK (nationalarchives.gov.uk). The Respondent sets out the pertinent text in the Rule 24 which begins at the heading 'If you intend to stay in the UK and wish to regularise your stay':

"If you intend to stay in the UK and wish to regularise your stay

If you decide to stay in the UK, you should apply for the necessary leave to remain in the UK. You'll also be able to submit an application form from within the UK where you would usually need to apply for a visa from your home country.

You'll need to meet the requirements of the route you're applying for and pay the UK application fee.

The terms of your leave will remain the same until your application is decided. If you are switching into work or study routes you may be able to commence work or study whilst your application is under consideration.

If your leave expires after 31 October 2020

You can submit an application form from within the UK where you would usually need to apply for a visa from your home country.

You'll need to show your application is urgent, for example if you need to start a new job or course of study, please provide full details of this in a covering letter with your supporting documents.

You'll need to pay the fees and meet all requirements of your visa as normal, except the need to submit the application in your home country.

This is being kept under review"

2. Mr Hasthrope before me argued that on the basis of that guidance the judge has misapplied the requirements set out under the heading 'If your leave expires after 31st October 2020', in the context of which he argued that the requirement for urgency which is set out therein adds nothing to the guidance beyond being an indication of the availability of an application for expedition. Mr Hasthrope's point is that the only requirement is set out at the subsequent paragraph which states in short "You'll need to pay the fees and meet all requirements of your visa as normal, except the need to submit the application in your home country".
3. Mr Avery counters that argument in two ways. Firstly, that the Ground of Appeal that the judge has applied the wrong guidance lacks materiality as the guidance which has been applied is in the same terms and accordingly there has been no procedural unfairness as alleged. In connection with the enlarged argument put forward by Mr Hasthrope today, Mr Avery correctly points out that this exceeds the application for permission and grant thereof, but that in any event the judge's assessment of the compliance with the guidance and the Respondent's exercise of discretion is not impugned by what on its face is an interpretation

which was neither argued on the day, and which is not borne out on the face of the discretionary guidance itself.

4. Having considered the guidance and the arguments that have been put forward, I find that there is no error of law in the judge's decision. The guidance which the judge has applied is the guidance which the parties have agreed is the applicable guidance at the time. There has been no procedural unfairness. Whatever misunderstanding there has been about the terms of that guidance it would appear to have been with the representatives rather than with the judge.

Decision

5. I find that there is no error of law such that the decision should be set aside and so the decision of the First-tier Tribunal dismissing the Appellant's appeal stands

E M Davidge

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 October 2023