



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002642
First-tier Tribunal No:
EA/08389/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 03 April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

SAYNAB MOHAMED
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Afzal of Global Migration Solutions UK
For the Respondent: Ms T Rixom, Senior Home Office Presenting Officer

Heard at Field House on 22 March 2024

DECISION AND REASONS

1. The Appellant is a citizen of Somalia, whose date of birth is recorded as 25th March 2058, who made application for entry clearance to the United Kingdom as the mother of the Sponsor, her son, a Norwegian national.
2. On 28th July 2022 a decision was made to refuse the application.
3. Not content with that decision the Appellant appealed. Her appeal was heard on 8th March 2023 by First-tier Tribunal Judge Row at Birmingham. The Appellant nor the Sponsor nor any representative attended. The judge noted however that according to the Tribunal's records all three had been notified by Notice dated 6th February 2023. He noted also that an attempt was made to contact the legal representatives, but both the landline number and mobile telephone numbers were found to be unobtainable. Against the background set out above Judge Row decided to proceed with the hearing in their absence. He then went on to dismiss the appeal.

4. By Notice dated 14th July 2023 the Appellant, through her representatives, made application for permission to appeal to the Upper Tribunal. The grounds assert that despite checks made there was no evidence of any attempt to contact the representatives by email nor is it accepted that the telephone number was unobtainable as the office landline redirects to a paid manned call centre. The Sponsor also confirmed that no attempt was made to contact him. Against that background the grounds further contend that there was no proper consideration of the matters in dispute.
5. On 7th June 2023 First-tier Tribunal Judge Cox refused permission on the basis that the grounds were inadequately supported with evidence of the contact details. However, on a renewed application to the Upper Tribunal, Judge Kamara on 14th August 2023, granted permission on the basis of arguable procedural unfairness.
6. When this matter came before me, I indicated that where a legal representative says that they did not receive a notice there should be compelling evidence that that is not true. Solicitors in particular are Officers of the Court, but all representatives would know of the very serious consequences that would result from misleading a Tribunal indeed contempt of court comes to mind but also attempt to pervert the course of justice.
7. Ms Rixom very fairly accepted that the proper approach, absent the file from the First-tier Tribunal, which despite an attempt to obtain was not obtained before today's hearing, was that this matter should be sent back to the First-tier Tribunal.
8. I make no criticism of Judge Row. Judge Row did everything right against the background of adjournments being discouraged in the interests of justice. Judge Row made all proper enquiries but once it was being asserted that the notice had not been received by the parties and there was evidence from three sources in this case, the representative, the Appellant and the Sponsor that the Notice had not been received then in my view the matter should have been set aside without the need for the matter to be brought before the Upper Tribunal.

DECISION

9. The appeal to the Upper Tribunal is allowed.
10. The decision of the First-tier Tribunal is set aside to be heard de novo in the First-tier Tribunal at Birmingham.



Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 March 2024