



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

**Case No: UI-2024-000090**  
**First-tier Tribunal No:**  
**HU/57519/2022**  
**IA/11103/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 03 April 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE WILDING**

**Between**

**CHARMINE WOODEND**  
**(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr P Tarfumaneyi, Legal Representative  
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**Heard at Field House on 26 March 2024**

**DECISION AND REASONS**

1. The appellant is a national of Zimbabwe. She brings this appeal against the decision of First-tier Tribunal Judge Hussain ('the Judge') dated 7 October 2023 dismissing her appeal.

**Background**

2. The appellant claims to have arrived in the UK on 11 November 2002, she claimed asylum the same day. She claims to have lived here continuously since. After several attempts to regularise her status, on 8 October 2021 she applied for leave to remain on human rights grounds. The respondent refused her application on 18 October 2022, and she appealed against this decision.

3. Her appeal came before the Judge on 29 August 2023. He heard the case on the papers as neither party appeared before him. There was no appearance either by any representative from the appellant. He dismissed the appeal.
4. The appellant appealed advancing 3 grounds of appeal:
  - a. The Judge ought not to have heard the appeal in the absence of the appellant and her representative.
  - b. The Judge materially erred in finding that the appellant did not meet the 20-year requirement of the rules.
  - c. The Judge materially erred in failing to consider the appellant's Article 8 rights outside the immigration rules.
5. The appellant was granted Permission to Appeal by First-tier Tribunal Judge Sills in a decision dated 9 January 2024.

### **The hearing**

6. I heard submissions from both representatives at the hearing. There had been a Rule 24 response filed by the respondent accepted that there was an error of law on the second and third grounds of appeal but not on the first. Mr Clarke made it clear that the acceptance of the error of law did not mean that the Respondent accepted that the immigration rules could be met.
7. In relation to the first ground Mr Clarke left it in the Tribunal's hands, but did note that the Judge had failed to consider whether i) the appellant had been properly served with the notice of hearing and ii) the interests of justice meant that the hearing should proceed in the appellant's absence.
8. At the hearing I notified the parties that I considered that the Judge did materially err in proceeding without the appellant, and materially erred by failing to ask himself whether it was in the interests of justice to proceed in her absence.

### **Decision and reasons**

9. As I indicated at the hearing I am satisfied that the Judge materially erred in law. The appellant and her representatives submit that they did not receive notification of the hearing, I have been unable to ascertain from the documentation on MyHMCTS where the notice of hearing was sent to, however Mr Tarfumaneyi told me that despite checking the firm's emails neither the emails notifying the hearing or sending the CVP link have been found. It would have been preferable had Mr Tarfumaneyi have provided evidence in the form of a witness statement with statement of truth as to the efforts that have been made, however I do not regard this as fatal in the circumstances, however in a case more finely balanced an appellant advancing such a case ought to provide evidence of the efforts made in searching an email inbox or similar.
10. This is because the Judge's approach to proceed in the appellant's absence fails to ask himself the most basic of questions to determine whether he ought to have proceeded. Rule 28 of the First-tier Tribunal Procedure Rules says:

*Hearing in a party's absence*

28. *If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—*

- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and*
- (b) considers that it is in the interests of justice to proceed with the hearing*

11. Regrettably the Judge failed to consider either limb in his decision to proceed. The Judge simply says in his decision that “[t]he appellant was not present at the hearing either in person or through a representative. In the circumstances, I resolved to determine the appeal on the papers before me”. This is an inadequate approach. The Judge failed, it seems, to make any enquiries to satisfy himself that the appellant had been notified of the hearing. I add at this juncture that the Judge is silent on whether the respondent had adequately been notified either. It is noteworthy that even in a case where the whole list has proceeded without a Presenting Officer, it is incumbent on a Judge to satisfy himself in each case that the provisions of rule 28 have been met.
12. The Judge then, having failed to consider whether notice had been given, then failed to consider whether it was in the interests of justice to proceed. This is a fatal error in my judgment. It was incumbent on the Judge to satisfy himself of this in order to proceed at all. His failure to do so renders a material error of law in proceeding in the absence of both parties.
13. For the reasons given above I conclude that the Judge’s decision was infected with a material error of law and his decision must be set aside.
14. Given the appellant did not have a fair hearing in the First-tier Tribunal, and that there are evidential issues between the parties as to her continuity of residence since 2002, I find that the appropriate outcome is for the case to be remitted to the First-tier Tribunal to be heard by any Judge other than Judge Hussain.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal *de novo* to be heard by any Judge other than Judge Hussain.

**Judge T.S. Wilding**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

Date: 26<sup>th</sup> March 2024