



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003510
First-tier Tribunal No: PA/00851/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 24 December 2024

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

UN (BOTSWANA)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Rule 34 Decision at Field House on 16 December 2024

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Jepson ('the Judge'), sent to the parties on 21 June 2024, dismissing their international protection and human rights appeal.
2. The core of the appellant's appeal is founded upon procedural fairness. The Judge understood various documents relied upon by the appellant

supporting an allegation that they have been targeted in respect of their sexuality to have been served late. Two other grounds of challenge are advanced.

3. Judge of the First-tier Tribunal Adio granted the appellant permission to appeal by a decision dated 26 July 2024.
4. Consequent to directions issued firstly by Upper Tribunal Judge Gill on 16 October 2024 and then by Upper Tribunal Judge O'Callaghan on 13 November 2024, the parties informed the Upper Tribunal that there was agreement as to procedural unfairness arising in this matter. Both requested that the decision of the Judge be set aside in its entirety and the matter remitted back to the First-tier Tribunal.

Rule 34 Decision

5. In considering whether to proceed under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I am mindful as to the circumstances when an oral hearing is to be held in order to comply with the common law duty of fairness and as to when a decision may appropriately be made consequent to a paper consideration: *Osborn v The Parole Board* [2013] UKSC 61; [2014] AC 1115 and *JCW v President of the Upper Tribunal (Immigration and Asylum Chamber)* [2020] EWHC 3103 (Admin), at [6.1 - 6.14].
6. In the circumstances and being mindful of the importance of these proceedings to the appellant, the identified position of the respondent, the expense to the parties of attending an oral hearing and the overriding objective that the Upper Tribunal deal with cases fairly and justly, I am satisfied that it is just and appropriate to proceed under rule 34.

Discussion

7. Ms Blackburn, Senior Presenting Officer, has confirmed the respondent's position that whilst the appellant's grounds of appeal founded upon inadequate reasoning and irrationality are not considered to establish a material error of law, it is accepted that the Judge materially erred in law in adversely placing weight upon late service of documents when assessing credibility. The respondent accepts that the documents were served upon her on 8 May 2024, several weeks before the hearing on 17 June 2024, and therefore cannot properly be said to have been served late. I consider that the respondent was correct to adopt this position.

8. This is the second occasion the Upper Tribunal has set aside a decision of the First-tier Tribunal in this matter. I observe the guidance in *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC). I am mindful that to date the appellant has not enjoyed adequate assessment of their appeal, and the second decision has been set aside on procedural fairness grounds. In the circumstances, I consider it fair and just to remit this matter to the First-tier Tribunal.

Notice of Decision

9. The decision of the First-tier Tribunal sent to the parties on 21 June 2024 is set aside for material error of law, with no preserved findings of fact.
10. The appeal is remitted to the First-tier Tribunal sitting in Manchester, to be listed before any judge other than First-tier Tribunal Judge Sweet and First-tier Tribunal Judge Jepson
11. An anonymity order is confirmed.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 December 2024