



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/05434/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8 October 2015**

**Decision & Reasons
Promulgated
On 14 October 2015**

Before

**UPPER TRIBUNAL JUDGE PERKINS
UPPER TRIBUNAL JUDGE S STOREY**

Between

D F
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Ti amiyu, Solicitor from Supreme Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. A similar order was made by the First-tier Tribunal and we make this order because the case concerns the welfare of child who is entitled to privacy.
2. This is an appeal by a female citizen of Jamaica against the decision of the First-tier Tribunal dismissing her appeal against the decision of the

Secretary of State that she is not entitled to a residence card as a derivative right under EEA Regulations.

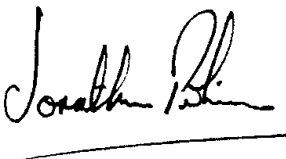
3. The reason for granting permission is the grounds disclose an arguable case that there had been a procedural irregularity amounting to a material error of law. The short point is that the First-tier Tribunal Judge wrongly prevented the appellant's representative from developing his oral submissions by unnecessarily and brusquely imposing a time limit. The result of that is that the representative did not feel able to say all the things that he needed to say and the appellant, who lost her appeal, has a sense that she did not have a fair hearing.
4. Whilst on the papers the appellant's case does not seem to be particularly strong, there are issues of the welfare of the child here and there are serious contentions about the allegation that she has entered the United Kingdom in breach of a deportation order. It is very undesirable when issues of such importance are raised that there should be any doubt in anybody's mind that they have been ventilated properly and thoroughly.
5. The evidence of the unsatisfactory conduct of the hearing comes not only from the assertions in the grounds but from a statement made by a barrister, Mr E Nicholson who is well known to the Tribunal. He witnessed the hearing in the First-tier Tribunal by reason of being in the building to conduct his professional duties and was so concerned about what had happened that he introduced himself to the representative in this case.
6. We do not for one moment suggest the judge deliberately behaved improperly but we are satisfied that she gave a regrettable impression, which might in fact be true, that she unnecessarily and wrongly prevented a representative from doing his job. This means that the hearing has not been done satisfactorily. Although the Tribunal probably has powers to limit submissions they should be exercised very sparingly. The rules provide for oral hearings and any attempt to restrict submissions is likely to invite criticism and risk a finding that the hearing was unfair.
7. These issues were raised on an earlier occasion. An opportunity was given for further consideration but there is no evidence from any source to suggest that Mr Nicholson's evidence is other than a fair summary of what happened.
8. Mr Tufan considered his position. Although making the point that there is some disagreement about whether the restriction was against submissions lasting fifteen minutes or thirty minutes, he accepted that there is a concern that the hearing has not been conducted fairly and he did not oppose our suggestion that we find that the First-tier Tribunal erred in law.
9. It is not appropriate to consider a fee award at this stage. Our finding is that the decision of the First-tier Tribunal erred in law and the appeal has to be heard again in the First-tier Tribunal. Mr Tiamiyu asked for the appeal to be heard at Taylor House which is an appropriate request given that the appellant lives in Hackney. However listing at Taylor House is subject to very long delays and, although we noted Mr Tiamiyu's concerns we made no order about where the appeal should be heard again.

10. We understand that the appeal has been listed for rehearing at Hatton Cross. The appellant can ask for a transfer if she wishes. We see no need to give any directions about which hearing centre is used. It may well be that, when everything is taken into account, Hatton Cross is the best place but that is a matter for the First-tier Tribunal.

Notice of Decision

11. The appeal is allowed. The decision of the First-tier Tribunal is set aside. It must be decided again in the First-tier Tribunal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 13 October 2015