



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

Appeal Number: PA/11272/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 20 April 2018**

**Decision Promulgated
On 23 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**EJ (ALBANIA)
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr James Collins, Counsel instructed by Sentinel Solicitors
For the Respondent: Mr L.Tarlow, Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal ("UT") from the decision of the First-tier Tribunal ("FtT") promulgated on 23 November 2017 dismissing her appeal against the decision of the respondent dated 23 October 2017 to refuse her protection and human rights claims. Her appeal was dismissed without a hearing for want of jurisdiction.

The Decision of the First-tier Tribunal

2. Designated Judge Shaerf dismissed the appeal for want of jurisdiction because at paragraph 125 of Annex A to the decision the respondent had certified that the claims were clearly unfounded pursuant to section 94 of the 2002 Act, and therefore she could not appeal their refusal from within the UK. However, as Judge Shaerf noted, she was purporting to exercise a right of appeal from within the UK.

The Grant of Permission to Appeal

3. Resident Judge Martin granted the appellant permission to appeal on the ground that, as had subsequently been clarified by the respondent in response to a PAP letter, *“it was the respondent’s intention that the refusal of that claim should give rise to a suspensive right of appeal”*, and so it was at least arguable that there was jurisdiction for the Tribunal to consider the appeal.

Discussion

4. At the hearing before me to determine whether an error of law was made out, Mr Tarlow conceded at the outset that the FtT had jurisdiction to hear the appellant’s appeal.
5. Mr Collins showed me a copy of the respondent’s response to the PAP letter. In this letter, the respondent drew attention to the fact that at page 2 of the decision letter the appellant was expressly afforded an in-right right of appeal. The respondent acknowledged that the contents of paragraph 125 were contradictory, but she asserted: (a) *“the claimed contradiction”* was not material as the appellant had exercised her right of appeal; and (b) the certification at paragraph 125 did not nullify the in-country right of appeal which had been afforded to her to appeal the decision of 23 October 2017.
6. The appellant had made an earlier asylum claim, which had been certified. When refusing her renewed asylum claim, the respondent expressly stated that her submissions amounted to a fresh claim. The respondent intended to afford the appellant an in-country right of appeal in respect of her fresh claim, and she expressly did so at page 2 of the decision letter.
7. Paragraph 125 is directly contradictory, as it asserts that the appellant cannot appeal from within the UK. I am satisfied that paragraph 125 was inserted in error. The error led to material unfairness as the FtT was thereby induced to proceed upon a mistaken premise, to the appellant’s manifest disadvantage.
8. The upshot is that the FtT was wrong to dismiss the appeal for want of jurisdiction, and the parties are in agreement that the decision of the FtT should be set aside and the appeal remitted to the FtT.

Notice of Decision

9. The decision of the FtT dismissing the appeal for want of jurisdiction was erroneous in law, and it is set aside. The FtT has jurisdiction to hear the appellant's appeal.

Directions

10. This appeal is remitted to the FtT at Taylor House.

Direction Regarding Anonymity - rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Monson

21 April 2018