



**UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

THE IMMIGRATION ACTS

Heard at: Birmingham
On: 6 June 2013

Decision Promulgated:
On: 7 June 2013

Before

Upper Tribunal Judge Pitt

Between

Mrs Hasna Hasna Abdillahi Gafaneh

Appellant

and

Entry Clearance Officer - Addis Ababa

Respondent

Representation:

For the Appellant: Not present

For the Respondent: Ms Plaess, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the determination dated 14 February 2013 of First-tier Tribunal Judge Colyer which refused the appellant's application to come to the UK to live with her son.

2. Ms Plaess conceded that the determination of the First-tier Tribunal disclosed an error on a point of law. The appeal was determined on the papers. This was because the Tribunal administration had listed it for a paper case. This is initially understandable where on the second page of the appeal form dated 18 June 2012 the appellant ticked "Papers" when asked at A. if she wanted an oral or paper hearing. It is less understandable when, immediately below this, at B. she also stated that her sponsor would be attending to give evidence and also that her representative would be attending. In addition, in the typed grounds of appeal the appellant stated that "*I will appreciate if an appeal date ... be given to me ...*", also suggesting that she expected an oral hearing.
3. In addition, I was provided with a letter dated 13 December 2012 from J.M. Wilson Solicitors to the Tribunal, stating that the indication on the appeal form that the appellant wanted the appeal dealt with on the papers was a mistake and that she wanted an oral hearing as the sponsor, her son, wished to give oral evidence. I was also provided with a fax cover sheet dated 13 December 2012 showing that this letter was faxed successfully to the Tribunal in Loughborough. Ms Plaess pointed out that this document was not faxed to the fax number given on the appeal forms. Nothing at all hung on that. The fax number on the appeal forms is specifically identified as the number to use for the appeal forms. It does not suggest what should be done with any other correspondence. The letter of 13 December 2012 was faxed to the fax number provided on the "Notice of Pending Appeal" dated 19 July 2012 which stated that "*ALL CORRESPONDENCE SHOULD BE SENT TO THE ADDRESS AT THE TOP OF THIS NOTICE ...*". It did not appear to me that the appellant's legal representatives could be faulted for using the fax number that they did.
4. I should add for completeness sake that on the morning of the hearing I was given a letter indicating that the legal representatives would not be attending but that the sponsor would be present. At that point I had only the fax cover sheet dated 13 December 2012 which showed that something had been sent successfully to the Tribunal on that date but did not show the substance of the enclosure. I contacted the legal representatives in order to obtain the substantive letter and they provided it. I informed Ms Plaess of what I had done and, in any event, the representatives indicated in their cover letter dated 6 June 2013 that I had contacted them to ask for the substantive letter. Ms Plaess did not object to my relying on the letter of 13 December 2012 notwithstanding how it had come to be provided to the Tribunal.

5. On the contrary, as above, Ms Plaess indicated that the respondent conceded the appeal as it was accepted that a material procedural irregularity and unfairness arose where the appellant had asked for an oral hearing but the matter had, unbeknownst to her, been decided on the papers without the oral evidence of the sponsor.
6. I was satisfied that this amounted to an error on a point of law such that the decision of the First-tier Tribunal had to be set aside and re-made.
7. It was also my view that, following paragraph 7.2 (a) of Part 3 of the Senior President's Practice Statement dated 25 September 2012, as the effect of the error has been to deprive the appellant before the First-tier Tribunal of a fair hearing, the appeal should be remitted to the First-tier Tribunal to be re-made. Neither party objected to that course of action, announced at the hearing.

DECISION

8. The Immigration Judge made an error on a point of law. The determination of the First-tier Tribunal is set aside.
9. The appeal is remitted to the First-tier Tribunal to be re-made.

DIRECTIONS

10. The hearing will take place on Tuesday 22 October 2013 at the Birmingham hearing centre.
11. A Somali language interpreter will be provided in order for the sponsor to give evidence.
12. If either party wishes to rely on any further documents, an indexed and paginated bundle must be filed with the Tribunal and served on the other party **BY TUESDAY 8 OCTOBER 2013 AT THE LATEST.**
13. Given the time that has passed since the date of the decision and as a result of the intervening appeal proceedings, the sponsor should note that it is very unlikely that a further adjournment will be granted for any reason.

Signed:
Upper Tribunal Judge Pitt

Date: 6 June 2013

