



**Upper Tribunal  
(Immigration and Asylum Chamber)** Appeal Number: EA/06079/2017

**THE IMMIGRATION ACTS**

**Heard at Priory Courts Birmingham**

**Decision & Reasons  
Promulgated  
On 8 February 2019**

**On 18 January 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**MOUNA BRIK EP DESKOY  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Yusuf of Kingswood Solicitors

For the Respondent: Mr D Mills Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The appellant is a Tunisian citizen. She appeals against a decision of judge Doyle (the judge) of the First-tier Tribunal (the FTT) promulgated on 31 August 2017.
2. The appellant applied for permanent residence in the UK on the basis that she is the spouse of an EEA national and had resided in the UK with her spouse in accordance with the Immigration (EEA) Regulations for a

continuous period of five years. Her application was refused on 14 June 2017.

3. The appellant's solicitors lodged an appeal with the FTT on 29 June 2017 but failed to provide grounds of appeal. On 17 July 2017 the FTT directed the appellant and her solicitors to lodge grounds of appeal no later than 24 July 2017 and warned that failure to comply may result in the appeal being dismissed without a hearing.
4. There was no response to the directions. On 30 August 2017 the judge dismissed the appeal without a hearing because of a failure to comply with directions.
5. On 14 September 2017 the appellant, through her solicitors, applied for permission to appeal to the Upper Tribunal. It was contended that the judge had materially erred in law by finding that no grounds of appeal had been submitted. The solicitors contended that grounds of appeal had been submitted on 21 July 2017 and produced a copy of a letter dated 21 July 2017 addressed to the FTT at the support centre in Leicester which referred to the grounds of appeal being enclosed.
6. Permission to appeal was granted by judge Mailer of the FTT who found it arguable that there may have been procedural unfairness if the solicitors had submitted the grounds of appeal on 21 July 2017. Judge Mailer commented that it was expected that evidence showing the documents were posted as alleged would be produced before the Upper Tribunal.

### **The Upper Tribunal Hearing**

7. Permission to appeal was granted on 5 February 2018 but the appeal was not listed until 18 January 2019. At the commencement of the hearing Mr Yusuf submitted evidence which he contended proved that the grounds had been sent by first-class post to the FTT on 21 July 2017. I expressed my surprise that this evidence had not been submitted prior to the hearing. There was no satisfactory explanation for the late lodging of this evidence.
8. The evidence consisted of a statement dated 17 January 2019 made by Qamar Akhtar a solicitor employed at Kingswood solicitors since 2015. He confirmed that the grounds were posted on 21 July 2017. Mr Yusuf produced the outgoing post book used by the solicitors in which there was an entry dated 21 July 2017 referring to the appellant by name and alongside the name was 'FTT- Court.'
9. Mr Mills did not concede that the FTT decision should be set aside but had no submissions to make.

### **My Conclusions and Reasons**

10. I am satisfied that the solicitors posted the grounds of appeal to the FTT on 21 July 2017. I am also satisfied that the grounds were never received

by the FTT until they was submitted with the application for permission to appeal to the Upper Tribunal on 14 September 2017.

11. I take into account the guidance in MM Sudan [2014] UKUT 00105 (IAC) which confirms that where there is a defect or impropriety of a procedural nature in the proceedings at first instance, this may amount to a material error of law requiring the decision of the FTT to be set aside. A successful appeal is not dependent on the demonstration of some failing on the part of the FTT.
12. The judge cannot be blamed for deciding the appeal without a hearing. There is no failing on the part of the FTT. However, as I accept that the solicitors did post the grounds of appeal, there has been unfairness and a procedural irregularity which amounts to an error of law. I therefore set aside the decision of the FTT.
13. I have taken into account paragraph 7.2 of the Senior President's Practice Statements and find that the appellant has not had an opportunity for her case to be fairly considered by the FTT and it is therefore appropriate to remit this appeal back to the FTT to be decided afresh.
14. The parties will be advised of the time and date of the hearing in due course. The appeal is to be heard by an FTT judge other than judge Doyle.

### **Notice of Decision**

The decision of the FTT is set aside. The appeal is allowed to the extent that it is remitted to the FTT to be heard afresh.

There has been no request for anonymity and no anonymity direction is made.



Signed  
2019

Date 25 January

Deputy Upper Tribunal Judge M A Hall

### **TO THE RESPONDENT FEE AWARD**

I make no fee award. The issue of any fee award will need to be decided by the FTT.



Signed  
2019  
Deputy Upper Tribunal Judge M A Hall

Date 25 January