



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

Appeal Number: EA/00632/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 19 October 2017**

**Decision & Reasons
Promulgated
On 02 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

**ONYEBUCHI EMMANUEL OKWARA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Al-Rashid, Counsel instructed by Carlton Law Chambers

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION ON ERROR OF LAW

1. The appellant was granted permission to appeal the decision of First-tier Tribunal Judge Jerromes who, in a Decision and Reasons promulgated on 1

February 2017, dismissed the appellant's appeal against the Secretary of State's decision to reject his application for a permanent residence card.

2. I agreed with the grounds that the judge erred in her application of the **Devaseelan** principles, treating an earlier First-tier decision as binding, and made errors in her assessment of the credibility of the witnesses.
3. The approach that the judge should have adopted was to treat the earlier decision as her starting point and to consider any fresh the evidence that was not before the earlier judge. Consequently, the judge was required to consider the fresh evidence for herself in her assessment of the issues that were before her. The judge adopted the wrong approach by asserting that it had not been suggested that there was some very good reason why the appellant failed to call the four witnesses at the First appeal hearing or why he failed to adduce at the first appeal any other relevant evidence which was now before her, such as the original photographs of the wedding and Ms Manuela's HMRC records. The judge's failure to consider this fresh evidence led her to commit a material error of law.
4. The judge's decision cannot accordingly stand.
5. The decision has to be re-made. The appellant's appeal is therefore remitted to Taylor House for re-hearing by a judge other than First-tier Tribunal Judge Jerromes.

Notice of Decision

The appeal is remitted to Taylor House for re-hearing.

No anonymity direction is made.

Signed

Date: 2 November 2017

Deputy Upper Tribunal Judge Eshun