



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case Nos: UI-2022-006715
UI-2022-006716

First-tier Tribunal Nos:
EA/51410/2021
EA/51408/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 24 October 2024**

Before

UPPER TRIBUNAL JUDGE MAHMOOD

Between

**TEMITOPE SAMUEL OLOGUNDUDU
OLUWASEYI VICTOR OLOGUNDUDU
(NO ANONYMITY ORDER MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr O Sobowale of Counsel instructed by Assured Legal Services

For the Respondent: Ms S Simbi, Senior Presenting Officer

Heard at Birmingham Civil Justice Centre on 18 October 2024

DECISION AND REASONS

1. This is my oral decision which I delivered at the hearing today.
2. The parties were in discussion this morning and they indicated to me that it is agreed between them that there is a material error of law in the

Judge's decision and that it is appropriate that there be a rehearing at the First-tier Tribunal.

3. Ms Simbi said that having reviewed the decision she considered that was the most appropriate course and Mr Sobowale said that the discussions this morning with Ms Simbi were helpful and productive and he agreed with the course being suggested by Ms Simbi.
4. By way of brief background the decision on appeal before me is that of First-tier Tribunal Judge Chohan dated 27 June 2022 against the dismissal of their appeals based on the Immigration (EEA) Regulations 2006 whereby the Respondent had refused to issue a family permit. _
5. Permission to appeal was granted by First-tier Tribunal Judge Buchanan on 9 September 2022.
6. Judge Chohan had said at paragraph 12, and indicated in other paragraphs, that there were no witness statements to support part of what was being said. In fact there were such witness statements. They were in the bundle of documents at the First-tier Tribunal hearing.
7. Because Judge Chohan failed to take into account relevant evidence which was before him then there is a material error of law. I suspect it may have been because there was a 1,000 page bundle and so it did not make Judge Chohan's task easy. Nonetheless the error of law is manifest and is material.
8. Any rehearing must ensure that there are only necessary and focused documents from the Appellant. Of course the First-tier Tribunal will provide its own directions but clearly to assist the Judge at the First-tier Tribunal and to further the overriding objective, the bundle will be vital. It may be that now that Mr Sobowale is instructed in the case that he will be able to guide his instructing solicitors as to the documents which need to go into the bundle.
9. In the circumstances I set aside the decision of the First-tier Tribunal. I apply *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC). I carefully consider whether to retain the matter for remaking in the Upper Tribunal in line with the general principles set out in paragraph 7 of the Senior President's Practice Statement. I take into account the history of the case, the nature and extent of the findings to be made and in considering paragraphs 7.1 and 7.2 of the Senior President's Practice Statement and given the scope of the issues and findings to be made, I consider that it is appropriate that the First-tier Tribunal re-make the decision.
10. Therefore, and particularly because the Appellants are in court and so they can follow what has happened. The result is that I allow their appeals against the decision of Judge Chohan. There will be a complete rehearing

at the First-tier Tribunal where a Judge of the First-tier Tribunal will consider their case again.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and is set aside.

There shall be a de novo hearing at the First-tier Tribunal.

Abid Mahmood
Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 October 2024