



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: OA/22205/2012  
OA/22207/2012

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 22 October 2013

Determination Promulgated  
On 1 November 2013

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

ENTRY CLEARANCE OFFICER - LAGOS

Appellant

and

OLUWABUSAYO FATUSIN  
OMOBOLANLE FATUSIN

Respondents

**Representation:**

For the Appellant: Mr Spence, a Senior Home Office Presenting Officer  
For the Respondents: Mr Rotimi Fatusin (Sponsor)

**DETERMINATION AND REASONS**

1. The respondents, Oluwabusayo Fatusin and Omobolanle Fatusin, are citizens of Nigeria. They had applied for entry clearance to the United Kingdom under paragraph 297 of HC 395 (as amended) as the children of Rotimi Fatusin (hereafter

referred to as the sponsor). By decisions dated 11 October 2012, the applications were refused and the respondents appealed to the First-tier Tribunal which, in a determination promulgated on 18 July 2013, allowed the appeals under the Immigration Rules. I shall hereafter refer to the respondents in this appeal as “the appellants” as they were before the First-tier Tribunal and to the Entry Clearance Officer as “the respondent”.

2. I find that the judge has fundamentally misunderstood the basis upon which the appeal fell to be determined. The judge considered that the refusal letters were “misleading as they are prepared by reference to paragraph 297 [of HC 395].” [17]. The judge appears to have believed [15] that the appeals fell to be considered under the new Appendix FM. That misapprehension appears to have led the judge to ignore those parts of paragraph 297 which had been cited by the ECO as the basis of refusal of the applications. In particular, the judge has had no regard to the assertion made in the refusal notices that the appellants had failed to prove that the sponsor in the United Kingdom had sole responsibility for them; the Entry Clearance Officer had noted that the appellants’ mother lives in Nigeria and had given permission for the children to live in the United Kingdom. Paragraph 297 was the correct paragraph of the Immigration Rules under which the applications fell to be considered and the misapprehension upon which the judge has conducted his analysis (I accept that the Presenting Officer before him appears to have suffered from a similar misunderstanding) has led him to ignore crucial parts of the reasons for refusal. I set aside his determination accordingly.
3. Because the judge misunderstood the basis on which he was required to determine the appeal, the parties have been denied a proper hearing of the appeal before the First-tier Tribunal. For that reason, I have decided to send the appeal back to the First-tier Tribunal for that Tribunal to remake the decision. None of the findings of fact of the First-tier Tribunal survive. The sponsor appeared before me at Bradford and I explained the position to him. I told the sponsor that he and the appellants should expect to provide evidence (including evidence regarding sole responsibility) to prove that the appellants satisfied the Immigration Rules at the next hearing. The First-tier Tribunal will need to consider all the issues which arise from the notices of refusal, including the document verification report.

## **DECISION**

4. The determination of the First-tier Tribunal which was promulgated on 18 July 2013 is set aside. I direct that the appeal should be heard again in the First-tier Tribunal (not Judge Upson) and the decision remade by that Tribunal.

Signed

Date 30 October 2013

Upper Tribunal Judge Clive Lane