



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/36633/2014**

THE IMMIGRATION ACTS

Heard at Manchester

**Decision and Reasons
Promulgated**

On 7 May 2015

On 18 May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE PLIMMER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR ALPHA ROBINSON

Respondent

Representation:

For the Appellant: Mr Harrison (Home Office Presenting Officer)

For the Respondent: Mr Timson (Counsel)

DECISION AND REASONS

1. The appellant ('the SSHD') appeals against a decision of First-tier Tribunal Judge De Haney dated 20 January 2015 in which he allowed the respondent's (the claimant's) appeal to the extent that he remitted it to the SSHD.
2. Both representatives agreed to a proposed way forward in this case. Mr Timson accepted that the SSHD was correct to point out in the grounds of appeal that Judge De Haney was entitled to and should have determined the appeal under Article 8 of the ECHR. He submitted, and I accept that the Judge erred in law in failing to take into account 276AO(iii), which

provides that 276ADE(1) does not apply 'in an appeal'.

3. This means that the First-tier Tribunal has erred in law and the decision must be remade.
4. Mr Harrison accepted that Judge De Haney has already considered Article 8 and the relevant evidence, and reached clear preliminary findings about it [14-16]. He agreed with Mr Timson, that the most appropriate way of dealing with this case is for it to be remitted to Judge De Haney for him to re-make the decision on Article 8 in light of all the relevant updated evidence. I agree that this is the most fair and proportionate way in which to deal with this case having regard to para 7.2 of the Senior President's Practice Statements and given the nature and extent of the factual findings already made and required in remaking the decision.

Decision

5. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.
6. The appeal is remitted to the First-tier Tribunal to be heard by Judge De Haney. He shall remake the decision in light of his previous observations and the relevant updated evidence.

Directions

- (1) The appeal relating to Article 8 of the ECHR shall be remitted to the First-tier Tribunal (TE: 2hrs) and remade by Judge De Haney on the first available date (which takes into account Mr Timson's availability).
- (2) Before 12noon on Thursday 21 May 2015 the claimant shall file and serve an indexed and paginated bundle (to replace all previous bundles) containing only those documents relevant to the Article 8 appeal.
- (3) Before 12 noon on Thursday 28 May 2015 the claimant shall file and serve a short skeleton argument particularising his Article 8 submissions by cross-referencing to pages within the bundle and the appropriate legal framework on Article 8.

Signed:

Ms M. Plimmer
Deputy Judge of the Upper Tribunal

Date: 8 May 2014