



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

Appeal Numbers: HU/09138/2017
HU/09142/2017

THE IMMIGRATION ACTS

Heard at Field House

On 28th January 2019

Decision & Reasons

Promulgated

On 20th February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

[G S]

[K S]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms L Appiah (Counsel)

For the Respondent: Mr C Avery (Senior Home Office Presenting Officer)

DECISION AND REASONS ON ERROR OF LAW

1. In a determination promulgated on 10th October 2018, First-tier Tribunal Judge Chana (“the Judge”) dismissed the linked appeals brought by the appellants, following refusal of their applications for entry clearance.
2. The decision begins by purporting to record the names of the representatives. Ms Appiah of Counsel, who appeared before the Judge in

the First-tier Tribunal, confirmed that the name which appeared was not hers. A Home Office Presenting Officer is also named, as acting for the respondent in the appeal. Mr Avery, for the Secretary of State, confirmed that no Presenting Officer was present at the hearing.

3. At paragraph 14 of the decision, the Judge refers to cross-examination and summarises evidence which apparently emerged from it. She distinguishes this evidence from what emerged in questions from her, which are summarised at paragraph 15. At paragraph 17, the Judge records that she heard submissions from both parties as follows: "I heard submissions from the from both parties in the full notes of the hearing are in my Record of Proceedings (sic)." The file does contain the Record of Proceedings but the front page is not completed so as to show who was present at the hearing and the handwritten notes contain on one page "XX", which is often used as an abbreviation for "cross-examination". As there was no Presenting Officer at the hearing, it is not clear what the Judge had in mind.
4. Mr Avery said that the Secretary of State accepted that the decision contained an error of law. In addition to the inaccuracies regarding the representatives, he accepted that there were other errors in the assessment of the evidence.
5. I find that the decision contains a material error of law, such that it should be set aside and remade. Someone reading the decision would conclude that the Judge's findings were based on submissions from representatives of both parties and that a witness was cross-examined. In reality, the appeal was not decided on this basis at all.
6. The parties were agreed that the appropriate venue for remaking the decision is the First-tier Tribunal. The decision will be remade there, by a Judge other than Judge Chana. The findings of fact made in the decision are not preserved.

DECISION

The decision of the First-tier Tribunal is set aside as containing a material error or errors of law. The decision will be remade in the First-tier Tribunal, by a Judge other than Judge Chana.

Signed

Date: 18th February 2019

Deputy Upper Tribunal Judge R C Campbell

Anonymity

The First-tier Tribunal Judge made no order or direction for anonymity. There has been no application before me and I make no order or direction on this occasion.

Signed

Date: 18th February 2019

Deputy Upper Tribunal Judge R C Campbell