



IAC-AH-BW-V1

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

Appeal Number: EA/05088/2019 (P)

THE IMMIGRATION ACTS

**Decision Under Rule 34
On 11th September 2020**

**Decision & Reasons Promulgated
On 11 December 2020**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**MR SAFIYANU GIZA ABUBAKAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria. His date of birth is 2 February 1989. He made an application for a residence card under the Immigration (European Economic Area) Regulations 2016. His application was refused on 9 September 2019. He appealed against the decision. His appeal was dismissed by Judge of the First-tier Tribunal G Solly in a decision promulgated on 31 December 2019.
2. The Appellant was granted permission to appeal by Upper Tribunal Judge Kebede on 3 September 2020. Judge Kebede issued COVID-19 directions following the grant of permission which were issued by the Tribunal on 8 September 2020.
3. In response to those directions Stephen Whitwell on behalf of the Secretary of State emailed the Upper Tribunal on 23 September 2020 stating as follows:

“Given the comments of UTJ confirming that the Appellant’s bundle, including most pertinently the skeleton argument and original marriage documentation were received by the IAC on 12 December 2019 (date stamped) and not referred to in the decision of FtTJ Solly, which was made on the papers, it is conceded there is a material error of law based on procedural fairness.

In the circumstances it is not proposed to provide formal written submissions in line with direction 2(ii) dated 8 September nor provide further comments about disposal in light of the fourth direction, save that a further paper hearing before the FtT appears the appropriate course of action”.

4. Mr Whitwell agrees that the matter can be dealt with in the absence of an oral hearing. The Appellant has not made any communication to the Tribunal since the sending of Judge Kebede’s directions. However, in the light of the concession made by the Secretary of State I exercise jurisdiction under Rule 34 of the 2008 Rules and determine the error of law issue without the need for a hearing. There is procedural irregularity arising from the failure by the judge to determine evidence that had been served on the Tribunal.
5. I set aside the decision of the First-tier Tribunal to dismiss the Appellant’s appeal and remit the matter to the First-tier Tribunal for a rehearing.

No anonymity direction is made.

Signed Joanna McWilliam
2020

Date 30 November

Upper Tribunal Judge McWilliam