



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-003320
UI-2023-003323
UI-2023-003324
First-tier Tribunal Nos: EA/51192/2022
IA/07866/2022
EA/50840/2021
IA/06062/2021
EA/51195/2022
IA/07869/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 5th of December 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN
DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

Mr Richmond Agyin-Frimpong Amoakoh (First Appellant)
Mr Marvin Agyin-Frimpong (Second Appellant)
Miss Lydia Agyin-Frimpong (Third Appellant)
(NO ANONYMITY ORDER MADE)

Appellants

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr A Malik, Counsel instructed by BWF Solicitors

For the Respondent: Mr E Terrell, Home Office Presenting Officer

Heard at Field House on 23 October 2023

DECISION AND REASONS

1. This is the decision that we delivered orally at the hearing. It is a decision which we have reached because of a sensible and appropriate concession by Mr Terrell on behalf of the Respondent.
2. We allow the Appellants' appeal. The matter will be remitted for hearing to the First-tier Tribunal. It is appropriate to give some limited background in respect of the matter.

3. It is also appropriate to say there appears no reason why there should be any anonymity direction, none was ordered at the First-tier Tribunal.
4. Insofar as the background is concerned, the substantive matter relates to applications by each of the Appellants, in which they had applied EEA family permits to join their Sponsor here in the United Kingdom. It is said that the Appellants are the children of the Sponsor.
5. The matter had come for a remote hearing before First-tier Tribunal Judge Hussain sitting at Taylor House Hearing Centre. The Appellants had representatives on record but the judge noted that the representatives had not attended the hearing. The judge had invited the clerk to the Tribunal to make enquiries by telephone as to why the representatives had not attended the hearing. The Appellants' representatives said in response to the Tribunal's clerk that they had not received a hearing link for the remote hearing. They had been told after making an enquiry about the listing of the case that the matter was in the float list awaiting allocation to a judge for hearing.
6. The judge had put the matter back to 2pm from 12.30pm because the Appellants' solicitors had told the Sponsor that he need not attend the hearing as his case had been placed in the floating list awaiting a judge. The judge was not pleased that the Appellants' solicitors had taken it upon themselves to inform the Sponsor that he would not be required to attend the hearing. We have to say we agree with the judge. It was most unfortunate that the Appellants' representatives took the course that they did.
7. In any event, the judge proceeded with the hearing, stating that he heard from first the Respondent's representative. There then appeared to have been some issues in respect of the effectiveness of communication via the remote link. Ultimately it appears that the judge decided that the appropriate course was for there to be written submissions from the Appellants' representatives. The judge appropriately used his case management powers to order that there be written submissions within a period of seven days.
8. The hearing in this case took place on 1st March. It is clear to us that the Appellants' representatives did send written submissions in time on 7 March to the same email address at which they had been corresponding with the judge's clerk. The judge's decision is dated 19 April 2023. However, it is clear that the judge did not have the Appellants' solicitor's written submissions provided to him.
9. In light of the concessions made, references to the law can be brief. The Appellants' grounds of appeal correctly refer to the Upper Tribunal's decision in **Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC)** and we of course remind ourselves that procedural fairness is essential.
10. Ultimately, in this case, throughout no fault of the parties and indeed through no fault of the judge, the written submissions, which were provided and which are detailed were not brought to the judge's attention. In the circumstances, there has been procedural error in the making of the judge's decision. It is appropriate

therefore for the appeal to be allowed. It is appropriate for the decision of the First-tier Tribunal Judge to be set aside.

11. The parties have indicated that they consider that as a principle of fairness that the matter ought to be considered at the First-tier Tribunal. We have considered the Court of Appeal's decision in **AEB [2022] EWCA Civ 1512** and the case of **Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC)**.
12. In the circumstances, considering the general principles set out in paragraph 7 of the Senior President's Practice Direction and considering paragraph 7.1 and 7.2, this matter requires an assessment of credibility. We conclude that a reassessment of the Appellants' claim as a whole is required. Fairness requires that there be a re-hearing at the First-tier Tribunal. In the circumstances, the matter will be reconsidered at the First-tier Tribunal. The whole of the decision of the First-tier Tribunal is thereby set aside.

Notice of Decision:

The Appellants' appeal is allowed.

The decision of the First-tier Tribunal is set aside.

The matter is remitted for re-hearing at the First-tier Tribunal.

Abid Mahmood
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

2023

23 October