



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case Nos: UI-2023-002972  
UI-2023-002973

First-tier Tribunal Nos: EA/07605/2022  
EA/08807/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

29<sup>th</sup> February 2024

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

**Ibrahim Muhammad (1)**

**And**

**Amina Muhammad (2)**

**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**DECISION AND REASONS**

1. This decision in respect of the appellants' appeals is made on the papers pursuant to Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The context in doing so is set out in the background below.

**Background**

2. On 12<sup>th</sup> July 2023, the appellants appealed the decision of Judge Cohen, promulgated on 14<sup>th</sup> June 2023, in which he dismissed the appellants' appeals pursuant to Appendix EU (Family Permit). FtT Judge Boyes granted permission on all grounds on 27<sup>th</sup> July 2023. When considering listing an error of law hearing, I issued the following directions on 18<sup>th</sup> August 2023:

"Judge Keith has considered the above appeals in the context of listing them for a hearing. In doing so, two key issues are apparent. The first is a dispute as to whether Judge Cohen of the First-tier tribunal decided the appeals on the papers or in fact whether there was a hearing. Judge Keith

expresses no view on this as he does not currently have access to any record of proceedings. The second issue is whether the Judge erred in failing to consider a bundle of documents which the appellants say they had filed before the Judge reached his decision. Judge Keith has ascertained that the First-tier Tribunal has in its records an e-mail with documents received on 16th February 2023, a copy of which is attached, before Judge Cohen reached his decision. In light of those records, he expresses the provisional view, whilst keeping an open mind, that if that record is correct then there appears to have been a procedural error such that the Judge's decision is not safe and cannot stand. In the circumstances, he directs as follows:

1. The Secretary of State is asked to confirm within seven days of these directions being sent whether she contests the appellant's appeal to this Tribunal.
  2. If the answer to direction (1) is that she does not contest the appeal, the parties are asked to confirm within 14 days of these directions being sent to the parties whether they consent to the appeals in the Upper Tribunal being decided without a hearing pursuant to rule 34.
  3. Also within 14 days, the parties are asked to confirm, if they are content for the appeal to be resolved pursuant to rule 34, whether they object to the appeal being remitted back to the First-tier Tribunal to a Judge to consider de novo, other than Judge Cohen."
3. In her rule 24 response dated 4<sup>th</sup> October 2023, , the respondent has stated:
- "3. The appeals are not opposed.
  4. The information on the SSHD's file does not definitively confirm whether there was a hearing before the First-tier Tribunal.
  5. However the SSHD notes that appeal bundles were served upon the SSHD on behalf of the appellants, in February and April 2023. It is also noted that documents were apparently filed with the FTT before Judge Cohen reached his decision, as set out in Judge Keith's directions.
  6. It therefore appears that the FTT has procedurally erred by failing to consider the appellants' documentary evidence. The SSHD accepts that Judge Cohen's decision should be set aside for material error of law.
  7. The SSHD consents to the appeals in the Upper Tribunal being determined without a hearing pursuant to rule 34.
  8. The SSHD does not object to the appeals being remitted to the FTT de novo, but requests that the appeals on remittal should be by way of oral hearing.
4. The appellants have not responded further, but in light of the respondent's concession and its views (as to which the appellants have had an opportunity to comment) I have concluded that pursuant to Rule 34, a hearing is unnecessary, before making a decision. I am satisfied that it is appropriate to determine this appeal without a hearing. I therefore proceed to consider and determine this appeal on the papers, by allowing the appellants' appeal.

**Notice of Decision**

**Judge Cohen's decision promulgated on 14<sup>th</sup> June 2023 contains a material error of law in that he failed to consider the appellants' documentary evidence, which was before the FtT. None of his findings are preserved and his decision is set aside in its entirety. I regard it as appropriate, given that the appellants' evidence was not considered at all, that the appeals be remitted back to the First-tier Tribunal for a complete rehearing.**

**The remitted appeal shall not be heard by Judge Cohen.**

**J Keith**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**22<sup>nd</sup> February 2024**