



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/22051/2014**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination  
Promulgated**

**On April 23, 2015**

**On April 27, 2015**

**Before**

**THE HONOURABLE LORD BANNATYNE  
DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MS QIULIAN ZENG  
(NO ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

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

For the Respondent: Represented by Sponsor, John Bailey

**DETERMINATION AND REASONS**

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The Appellant is a citizen of China. The appellant is married to a British citizen, John Bailey, and together they have a child who is a British citizen. On June 3, 2012 the appellant entered the United

Kingdom on a family visit visa that was valid until May 21, 2014. On January 12, 2014 she applied for a derivative residence card but this application was refused by the respondent on April 15, 2014.

3. The appellant appealed this decision on May 19, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002 and Regulation 26 of the Immigration (European Economic Area) Regulations 2006.
4. The appeal came before Judge of the First-tier Tribunal Thomas (hereinafter referred to as the "FtTJ") on October 22, 2014, 2014 and in a decision promulgated on November 18, 2014 he allowed the appeal.
5. The respondent lodged grounds of appeal on November 20, 2014 submitting the FtTJ had erred by materially in law.
6. On January 6, 2015 Judge of the First-tier Tribunal Bartlett gave permission to appeal finding the FtTJ may have erred by allowing the appeal outright because he had found the decision was not in accordance with the law.
7. The matter came before me on the above date and the parties were represented as set out above. The appellant and her husband were in attendance.

### **PRELIMINARY ISSUE**

8. We asked Mr Nath what actions the respondent had taken in light of the content of paragraph [3] of the FtTJ's determination, paragraph [7] of the grounds of appeal and paragraph [6] of the grant of permission. After taking instructions Mr Nath indicated that nothing further had been done despite what the respondent having given the impression she would be reviewing the same.
9. We explained to both Mr Bailey and the appellant that as the FtTJ had found the decision was not in accordance with the law the FtTJ should have remitted the decision back to the respondent for a lawful decision to be taken. By allowing the appellant's appeal outright the FtTJ had erred. Both Mr Bailey and the appellant understood this reasoning.
10. Mr Nath was unable to give an undertaking that the matter would be reviewed either within twenty-eight days or within any other suitable time frame and we indicated to him that the respondent's behaviour was unacceptable.
11. We found for the reason given above and identified at paragraph [5] in the grant of permission there had been an error in law. We remit this matter back to the respondent so she can review the decision

and make a lawful decision having regard to all the facts of the case.

12. We would expect the respondent to review this application within twenty-eight days and to issue a lawful decision.

**DECISION**

13. There was a material error. We have set the decision aside and we remit the matter back to the respondent for a lawful decision to be taken.

14. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 and we see no reason to alter that order.



Signed:

Dated:

Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT  
FEE AWARD**

As the decision was not in accordance with the law we uphold the fee decision made by the First-tier Tribunal. have allowed the appeal we make no fee award.



Signed:

Dated:

Deputy Upper Tribunal Judge Alis