



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

**Appeal Number: HU/02733/2019 (P)**

**THE IMMIGRATION ACTS**

**Decided under rule 34  
On 1 October 2020**

**Decision & Reasons Promulgated  
On 7 October 2020**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**KATE OMOREGHE**

**Appellant**

**-and-**

**ENTRY CLEARANCE OFFICER**

**Respondent**

**DECISION AND REASONS**

**BACKGROUND TO THE APPEAL**

1. The Appellant is a national of Nigeria. She applied for leave to enter for the purposes of settlement with her husband on 10 October 2018, but her application was refused on 2 January 2019. She appealed and First-tier Tribunal Judge Hussain dismissed her appeal in a decision promulgated on 2 December 2019.
2. Permission to appeal was granted by First-tier Tribunal Judge Robertson on 29 April 2020. She found that it was arguable that First-tier Tribunal Judge Hussain erred in law as he had

not referred to witness statements by members of the Appellant's family or given any reason for giving no weight to this evidence.

3. Upper Tribunal Judge Kopieczek made directions on 31 July 2020, having come to the view that in the light of the Corona Virus Pandemic, it would be appropriate to determine whether there had been an error of law on the papers.
4. The Appellant replied to these directions on 10 August 2020, making further submissions in support of her appeal. The Respondent replied on 12 August 2020. In this response, she accepted that First-tier Tribunal Judge Hussain had made a material errors of law in his decision in so far as he had failed to take into account relevant witness statements and accepted that his decision should be set aside.
5. It was the Respondent's view that the error of law appeal could be determined on the papers. The Appellant had not responded to this part of Upper Tribunal Judge Kopieczek's directions but did not object to there being a hearing on the papers.
6. I have read and taken into account the detailed submissions made by both parties and have taken into account the fact that the error of law made by First-tier Tribunal Judge Hussain lead to him not giving full consideration to the Appellant's entitlement to entry clearance. In these circumstances, I find that there are issues which will need to explored at an oral hearing but, in the light of the findings of fact that will need to be made, the appropriate venue for such a hearing is the First-tier Tribunal.

#### **ERROR OF LAW DECISION**

7. As accepted by both parties, Frist-tier Tribunal Judge Hussain made a material error of law when he found that the Appellant had not established that her marriage was genuine and subsisting because he had not taken all relevant evidence into account or given reasons for failing to do so.
8. Therefore, I find that First-tier Tribunal Judge Hussain's decision contained material errors of law.

**DECISION**

- (1) The Appellant's appeal is allowed
- (2) First-tier Tribunal Judge Hussain's decision is set aside.
- (3) The appeal is remitted to be heard *de novo* in the First-tier Tribunal by a First-tier Tribunal Judge other than First-tier Tribunal Judges Hussain or Robertson.

**DIRECTIONS**

- (1) Any further evidence on which the Appellant wishes to rely should be submitted to the First-tier Tribunal.

Nadine Finch

Signed  
Upper Tribunal Judge Finch

Date 1 October 2020