



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

Appeal Number: EA/01329/2020 (V)

**THE IMMIGRATION ACTS**

**Heard at a remote hearing via Decision & Reasons Promulgated  
Teams**

**On 30 June 2021**

**On 7 July 2021**

**Before**

**UPPER TRIBUNAL JUDGE PLIMMER**

**Between**

**AUGUSTINA DAMPTEY**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**For the appellant:** Mr Beyebenwo, Equity Law Solicitors

**For the respondent:** Mrs Willocks-Briscoe, Senior Home Office Presenting  
Officer

**DECISION AND REASONS**

1. Mrs Willocks-Briscoe conceded, and I accept, that the First-tier Tribunal (FTT) materially erred in law in appearing to require cohabitation for the relationship between the appellant and her sponsor to be genuine and in dealing with the case on the basis that regulation 23(3) of the Immigration (EEA) Regulations 2016 was relied upon by the respondent when the decision letter appears to be predicated upon regulation 23(4). The findings of fact are infected by these errors of law and I accept that the FTT decision must be remade entirely. Mr Beyebenwo agreed with this approach.

2. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the FTT. Mr Beyebenwo submitted that although the findings of fact must be remade entirely, the matter should be determined by the UT solely because this would involve less delay for the appellant. He was unable to particularise this assertion and accepted that he was not in a position to conduct the resumed hearing today.
3. It would be helpful to both parties to understand the precise basis upon which the respondent puts her case against the appellant in the light of the past confusion. In the circumstances the FTT may wish to address this by way of directions at an early stage.

## **Decision**

4. The decision of the FTT involved the making of a material error of law. Its decision cannot stand and is set aside.
5. The appeal shall be remade by FTT by a judge other than FTT Judge Ian Howard, on a de novo basis.

Signed: *Ms Melanie Plimmer*  
Judge of the Upper Tribunal

Dated: 30 June 2021