



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

Case No: UI-2023-004929  
FtT No: EA/01164/2023

**THE IMMIGRATION ACTS**

Decision & Reasons Issued:

On 21<sup>st</sup> of March 2024

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

**FRANCY CHERILE CALIBET  
(aka CALIBET FRANCY CHERIE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No attendance

For the Respondent: Mr T Lindsay, Senior Presenting Officer

**Heard at Field House on 15 March 2024**

**DECISION AND REASONS**

**Introduction**

1. The appellant appeals a decision of the First-tier Tribunal (Judge of the First-tier Tribunal Andrew) sent to the parties on 10 August 2023 dismissing her appeal against the respondent's refusal of her permanent residence application.

### **Proceeding in absence of appellant**

2. The appellant did not attend the hearing at Field House. Observing rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I decided it was in the interests of justice to proceed with the hearing in the absence of the appellant. I was satisfied that a notice of hearing had been sent to the last known address of the appellant.
3. Additionally, Mr Lindsay confirmed on behalf of the respondent that the decision of the Judge was properly to be set aside on the grounds of procedural unfairness.

### **Decision**

4. The hearing before the First-tier Tribunal proceeded on the papers. The Judge detailed, at [7]-[8] of her decision:

"7. The appellant has provided no evidence to show she was resident in the United Kingdom before the Specified Date. I have no Appellant's Bundle before me, merely the Grounds of Appeal.

#### *Application of the law to the facts*

8. Because I have found there is no evidence to show the Appellant was resident in the United Kingdom before the Specified Date I am not satisfied that the Appellant can meet the provisions of EU11, EU11A, EU14 or EU14A."

5. By her grounds of appeal the appellant contends, *inter alia*:

"The respondent did not provide me with a bundle as required ...

The order of the Tribunal made on 23 May 2023 which was emailed to me on the same date ... states that the respondent should file the bundle in 14 days from the date of the decision.

It stated that I have to file my [bundle] after 28 days after the respondent has filed his.

I ... have not received any bundle from either the [Tribunal] or the respondent to enable me to provide or respond to the issues at stake ...”

6. On 4 March 2024 the respondent filed a short rule 24 reply with the Upper Tribunal. He accepted that he had not served his bundle upon the appellant in advance of the hearing before the First-tier Tribunal.
7. In the circumstances, Mr Lindsay accepted on behalf of the respondent that the Judge’s decision was erroneous in law on procedural fairness grounds. He was correct to adopt this position. The Judge should properly have noted the previously issued directions and observed that the respondent had not complied with the first stage of the timetable. The applicant is a litigant in person and cannot be blamed for her reasonable belief that consequent to directions she was not required to take steps with respect to filing any documents she wished to rely upon until she received the respondent’s bundle.
8. I set aside the decision in its entirety.

### **Re-making the Decision**

9. As the Judge’s decision is fatally flawed by reason of procedural unfairness this matter is properly to be remitted to the First-tier Tribunal for the decision to be remade.
10. The appellant has requested that her appeal be considered on the papers. As the appellant did not attend the hearing before the Upper Tribunal, and to date neither party has filed appeal bundles, this may be a matter that would be aided by case management, possibly with the appellant attending a short hearing either remotely or in person. Ultimately, this is a decision for the First-tier Tribunal, not for this Tribunal, though it was an approach endorsed by Mr Lindsay before me.
11. Additionally, I observe that the appellant has filed documentary evidence with the Upper Tribunal that should properly be refiled with the First-tier Tribunal.
12. The paper consideration was undertaken by a Judge sitting in Birmingham. The closest First-tier Tribunal hearing centre to the

appellant is Taylor House. Consequently, I remit this matter to Taylor House.

**Notice of Decision**

13. The decision of the First-tier Tribunal sent to the parties on 10 August 2023 is subject to material error of law. The decision of the First-tier Tribunal is set aside in its entirety.
14. This matter is remitted to the First-tier Tribunal sitting at Taylor House. It is to be heard by any judge other than Judge Andrew.

*D O'Callaghan*  
**Judge of the Upper Tribunal**  
Immigration and Asylum Chamber

**15 March 2024**