



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

Appeal Number: IA/22097/2014

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court

On 23 December 2014

Determination

Promulgated

On 19 January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

BINTA CEESAY

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Appellant in person

For the Respondent: Mr N Smart (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant, who was born on 18 August 1987 and who is a citizen of Gambia, appeals against the determination of First-tier Tribunal Judge Gordon that was promulgated on 18 August 2014.
2. Permission to appeal was granted by First-tier Tribunal Judge V Osborne on 25 September 2014 on the grounds that it was arguable that Judge Gordon had erred by dealing with the appeal without a hearing when the appellant had in fact notified the First-tier Tribunal on 13 June 2014 that although

she had initially indicated in her notice of appeal that she wanted the hearing “on papers” she had subsequently changed her mind.

3. After being advised by me that the First-tier Tribunal had indeed received such a request but had failed to act upon it, Mr Smart informed me that he no longer opposed the appeal. He suggested that in such circumstances a procedural error had been committed and that the proper course of action would be for the appeal to be remitted to the First-tier Tribunal for a hearing afresh.
4. I agree with his suggestions as they properly reflect the authorities on such matters.
5. In order that the remitted appeal can proceed smoothly I make the following directions. These may be supplemented by other directions made by the First-tier Tribunal.
 - a. The appeal is to be heard by the First-tier Tribunal on the first available date at the Birmingham hearing centre.
 - b. Nothing is preserved from the determination of Judge Gordon.
 - c. No additional appeal fee is required. The appeal has reached a stage where it would be unjust not to conduct an oral hearing.
 - d. The issues arising in this appeal relate to whether the appellant is the spouse of an EEA national working in the UK even though the couple is separated. It is for the appellant to show that it is more likely than not that she is still the spouse of a qualified person and that her spouse is exercising EU law rights in the UK.
 - e. The parties are required to submit to the Tribunal and to each other all documents on which they will seek to rely at least seven calendar days before the substantive hearing. Failure to do so may result in late evidence not being admitted.

Decision

The determination of Judge Gordon contains an error on a point of law and is set aside.

The appeal to the First-tier Tribunal is remitted to that chamber for a fresh hearing.

Signed

Date **23 December 2014**

Deputy Judge of the Upper Tribunal