



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/00309/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 24 April 2018**

**Decision & Reasons  
Promulgated  
On 09 May 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**JACKEY HANG LIMBU**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr. H. Kannangara, Counsel, instructed by Jusproress Solicitors

For the Respondent: Mr. I. Jarvis, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Kaler, promulgated on 18 August 2017, in which she dismissed the Appellant's appeal against the Respondent's decision to grant entry clearance as the dependent child of the Sponsor.
2. Permission to appeal was granted as follows:

"It is an arguable error of law that as the Judge did not receive various witness statements sent to the Tribunal on 11 August 2017 to prove that the Sponsor has sole responsibility for the Appellant, such evidence may

have made a material difference to the outcome or to the fairness of the proceedings.”

3. The Sponsor attended the hearing. I heard submissions from both representatives following which I stated that I found that the decision involved the making of a material error of law due to a procedural irregularity. I remitted it to the First-tier Tribunal to be reheard.

### **Error of Law**

4. The Rule 24 response from the Respondent states:

“If the Tribunal is satisfied that the documents were received but for some reason not passed to the judge the Secretary of State would have no objection to the case being heard afresh in the First-tier Tribunal.”

5. The appeal was decided “on the papers”. The file was given to the Judge on 11 August 2017 at Yarl’s Wood. The decision is dated 15 August 2017. It was promulgated on 18 August 2017.
6. On the Tribunal file is a bundle containing four witness statements with a covering letter dated 11 August 2017. At the hearing Mr. Kannagara provided a letter from the Appellant’s representatives which states that these were posted by first class post to the Tribunal on 11 August 2017. It states “We also confirm that delay in posting occurred due to the reason that we were waiting for the Appellant’s father’s statement to include in the bundle”.
7. The notice sent by the Tribunal to the Appellant and his representatives acknowledging that the Appellant had elected for the appeal to be decided on the papers, states that any further evidence or submissions must be sent by 21 July 2017. The Appellant’s representatives did not send any further evidence until 11 August 2017. However, it is established in law that the Judge is still seized of the matter until the determination is promulgated. The determination was promulgated on 18 August 2017. It is not entirely clear from the bundle of witness statements on the file, but it appears that they were received on 14 August 2017. However, there is no indication that these documents were forwarded to the Judge in order that they could be taken into account when she made her decision.
8. Therefore, although it is clear that the blame partly lies with the Appellant’s representatives, given the principle that the Judge is seized of the matter until promulgation, and given that the witness statements were received by the Tribunal at the very latest on 14 August 2017, some four days before the decision was promulgated, I find that there has been a procedural irregularity which has led to a material error of law. Clearly, this this is not due to any conduct of the Judge.
9. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party

before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. Given the nature of the error, I find that it is appropriate to remit this case to the First-tier Tribunal.

10. It was submitted by Mr. Kannangara that the Appellant now wanted an oral hearing. It is for the Appellant's representatives to sort out any ancillary matters relating to the request for an oral hearing.

**Notice of Decision**

11. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside.
12. The appeal is remitted to the First-tier Tribunal to be reheard.
13. No anonymity direction is made.

Signed

Date 2 May 2018

**Deputy Upper Tribunal Judge Chamberlain**