



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

**Case No: UI-2022-002457**  
**First-tier Tribunal No: EA/51830/2021**  
**IA/07919/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 25 January 2023**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**Mr Rasaki Arogundade**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr J Waithe, counsel instructed by Okafor & Co Solicitors  
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**Heard at Field House on 10 January 2023**

**DECISION AND REASONS**

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Bart-Stewart heard on 8 April 2022.
2. Permission to appeal was granted by Upper Tribunal Judge Jackson on 9 November 2022.

Anonymity

3. No direction has been made previously, and there is no reason for one now.

Background

4. The appellant entered the United Kingdom on a visitor's visa which was issued on 1 September 2011. No further application was made until 18 May 2017, when the appellant made a human rights application. That application was refused on 9 January 2018. On 28 November 2019, the appellant was issued with a Residence Card as the unmarried partner of an EEA national. On 2 October 2020, the appellant was granted leave to remain under the European Union Settlement Scheme (EUSS). The respondent revoked that leave by way of a letter dated 25 May 2021. This is the decision which is the subject of this appeal.
5. According to the decision of 25 May 2021, the respondent received notification that the appellant's relationship with his sponsor had broken down. Enclosed with the respondent's bundle of evidence was a statement from the appellant's former partner stating that their relationship was no longer subsisting.

#### The decision of the First-tier Tribunal

6. Neither the appellant nor the respondent attended the hearing before the First-tier Tribunal which took place via video link. The judge considered the grounds of appeal which referred to the appellant having a child living in the United Kingdom, but was not prepared to allow the appeal for this reason. The judge ultimately decided that the decision was in accordance with the 2016 Regulations.

#### The grounds of appeal

7. The grounds of appeal mainly argued that the appellant was not sent the link to enable him to join the video hearing. The relevance of this being that the appellant's partner was unable to give evidence as to why she told the respondent that the relationship had broken down. The grounds asserted that the appellant was involved in the life and upbringing of his EEA-national child.
8. Permission to appeal was granted on the following basis.

The decision states that the Judge was satisfied that the Appellant and his representatives were served with notice of the date, time and place of the hearing; consistent with the records showing that the hearing was listed on 17 March 2022 for 10am on 8 April 2022. There is no dispute that the notice of hearing was served, only that the CVP joining instructions were not received. There is no suggestion that either the Appellant or his representatives made any contact with the First-tier Tribunal for the same either prior to or on the day of the hearing, despite having had the notice of hearing and no explanation is given for this failure. However, it is just arguable that the Tribunal failed to expressly consider whether it was in the interests of justice to proceed with the hearing in the absence of either party given the nature of the factual dispute raised in the appeal.

9. The respondent's Rule 24 response, dated 13 December 2022, included the following.
  2. The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.
  3. The determination shows that the FTT took all reasonable steps to ensure that the appellant had the opportunity to participate in the hearing. There is no evidence that the appellant or their representative made any attempt to resolve the issue of the lack of CVP joining link. In the circumstances it is not accepted that there was any unfairness which amounted to an error of law.

4. The respondent invites the Tribunal to maintain the decision of the First Tier.

### The hearing

10. When this matter came before me, the appellant attended the hearing together with his partner and child. Mr Tufan indicated that the respondent was prepared to give the appellant the benefit of the doubt in relation to his inability to attend the hearing of his appeal and it was therefore accepted that the First-tier Tribunal had erred in failing to send the appellant the link he required. He invited me to remit the matter to the First-tier Tribunal for a rehearing. In these circumstances, I had no need to hear from Mr Waithe. At the end of the hearing, I announced that I was satisfied that the decision of the First-tier Tribunal involved the making of a material error of law.

### Decision on error of law

11. The First-tier Tribunal judge took care to ensure that the appellant had the opportunity to attend the video hearing of his appeal. When there was no sign of him in the morning, she put the matter back to later in the day, as she states at [8] of the decision. Nonetheless, the appellant states that he did not receive the relevant link and there is no indication that he did. Indeed, the respondent has conceded as much. This inadvertent error is material as the appellant had stated in his grounds of appeal that he was continuing to rely on his relationship with an EEA national which had resumed by the time of the hearing, as well as his relationship with the child of that relationship.
12. I acceded to the request of both parties to remit this matter to the First-tier Tribunal. While mindful of statement 7 of the Senior President's Practice Statements of 25 September 2012, the nature and extent of the findings to be made as well as the fact that the appellant has yet to have an adequate consideration of his EEA appeal at the First-tier Tribunal. I find that it would be unfair to deprive him of such consideration.

### Decision

**The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.**

**The decision of the First-tier Tribunal is set aside.**

**The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of 2 hours by any judge except First-tier Tribunal Judge Bart-Stewart.**

T Kamara

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**10 January 2023**