



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

**Case No: UI-2022-006526**  
**First-tier Tribunal No: HU/58064/2021**  
**IA/17655/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 16 July 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHANA**

**Between**

**MS HELEN BOI AJABOR**  
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S.N. Khan of Counsel

For the Respondent: Mr A Basara, Senior Presenting Officer

**Heard at Field House on 14 June 2023**

**DECISION AND REASONS**

1. The appellant, a citizen of Nigeria born 14 October 1986 appealed against the decision of First-tier Tribunal Judge Cohen from the decision of the respondent dated 2 December 2021 refusing her application for leave to remain as a spouse of a British citizen. Permission to appeal was granted by First-tier Tribunal Rachel Galloway on 25 November 2022 stating that it is arguable that there was material misdirection of the immigration rules. The Judge found that the appellant could not meet the requirements of EX1 because she was an illegal entrant to the United Kingdom and remained within the United Kingdom without status for the duration of her stay. It is argued that the Judge erred in the approach to the appellant's mental health by failing to consider this aspect in respect of Article 8 only considering it in respect of Article 3.

2. The Judge stated that having considered the grounds of appeal and the decision in full, there is an arguable material error of law in this instance. It does appear that the Judge has incorrectly found that EX1 does not apply when it ought to have been considered by virtue of E-LTR P .2 .2 (b). Further it is arguable that the Judge should have considered the mental health provision of the appellant within the context of Article 8 proportionality assessment as the judge appears to have just considered this in reference to Article 3. Permission was granted to appeal ground.
3. At the hearing it was accepted by the senior presenting Officer that the Judge fell into material error in respect of ground 1 and 2 and as a consequence the appeal be remitted to the First-tier Tribunal to be heard de novo.
4. In the circumstances, I find that there have been material errors of law in the decision of the First-tier Tribunal Judge and I set it aside. I direct that the appeal be remitted to the First-tier Tribunal for findings of fact to be made for both within and outside the immigration rules. I further direct that the appeal be placed before any First-tier Tribunal Judge other than Judge Cohen.

Signed by

A Deputy Judge of the Upper Tribunal

Ms S Chana

Dated this 10<sup>th</sup> day of July 2023