



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

**Case No: UI-2024-001279**  
**First-tier Tribunal Nos:**  
**HU/58837/2023**  
**LH/05662/2023**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 27 June 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SAINI**

**Between**

**Oghenero Ese Odibo**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr S Canter, Counsel; Richmond Chambers LLP  
For the Respondent: Ms R Arif, Senior Home Office Presenting Officer

**Heard at Field House on 19 June 2024**

**DECISION AND REASONS**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Davies dismissing her appeal against the Respondent's decision to refuse her human rights claim.
2. The Appellant applied for permission to appeal and was granted permission by Upper Tribunal Judge Sheridan in the following terms:  

"It is arguable that several potentially significant documents, as listed in paragraph 16 of the grounds, were not before the judge who decided the appeal. It is arguable that the failure to consider these documents affected all aspects of the decision. All grounds are arguable."
3. There was no Rule 24 response provided by the Respondent but Ms Arif indicated that the appeal was opposed on all grounds.

## **Findings**

4. At the conclusion of the hearing, I announced my decision that I had found that there was a material error of law, in respect of Ground 1, which infected the entirety of the decision but that my reasons for so finding would follow, which I now give. I find that the decision demonstrates a material error of law such that it should be set aside in its entirety due to the arguments raised and comprehensively set out in Ground 1 put forward by the Appellant, which may be summarised as follows.
5. The Appellant applied for leave to remain in the UK on 15<sup>th</sup> October 2021, having become an overstayer following her entry as a visitor. The application was refused on 6<sup>th</sup> July 2023 and the Appellant appealed. The appeal hearing was originally scheduled for 29<sup>th</sup> November 2023 at IAC, Manchester, in which the Appellant was due to represent herself as a litigant in person. On 14<sup>th</sup> November 2023 the Appellant attended North Manchester General Hospital and was diagnosed with a threatened miscarriage (suspected). Following four further visits to the emergency department at the hospital she was diagnosed with an ectopic pregnancy and a miscarriage. On 27<sup>th</sup> November 2023 the Appellant made an application to the Tribunal in which she submitted medical evidence of her admissions and requested inter alia that:

“I am sadly experiencing a miscarriage and consequently, regrettably cannot attend an oral hearing.... Please know that I am fully committed to providing any further information needed for your review. Thank you for your attention to this matter. I eagerly await your guidance on the next steps”.
6. A Tribunal caseworker refused the application, following which the Appellant telephoned and spoke with the Tribunal and then submitted a further application, which asked for the hearing to be decided on the papers. Here however, is where matters went array. On 27<sup>th</sup> November 2023 the Tribunal adjourned the hearing and the notice of the adjourned hearing however stated as follows: “The hearing at IAC Manchester ... on 29<sup>th</sup> November 2023 has been adjourned.... The Tribunal will reschedule the hearing and you’ll receive a notification of the new hearing”. That did not come to pass however and instead the appeal was heard “on the papers” on 27<sup>th</sup> November 2023 by Judge Davies. The judge dismissed the appeal in his decision dated 10<sup>th</sup> December 2023 following which the Appellant applied for permission to appeal in time, which was ultimately granted by Judge Sheridan.
7. Ground 1 primarily argues that the judge in the First-tier Tribunal failed to consider the documents that the Appellant had submitted for inadvertent reasons. In short, it is argued that the Appellant did not submit an Appellant’s bundle but instead submitted documents that she wished to rely on piecemeal. In the event, the Tribunal produced a stitched 303 page bundle, which is dated 22<sup>nd</sup> November 2023, which appears on MyHMCTS. This bundle contained the Home Office bundle and some, but not all, of the Appellant’s documents. It is apparent that key documents are missing from that stitched bundle. In the decision at paragraph 11 it is evident that Judge Davies had a 303 page bundle, as described above and was of the opinion that he could fairly determine the appeal on the papers. As alluded to in the grant of permission by Judge Sheridan, the Appellant complained that a number of other documents were not included in the stitched bundle – despite those documents being uploaded well in advance of

the hearing and the upload taking place on 21<sup>st</sup> September 2023, over two months before the bundle was electronically stitched. Those documents included the Appellant's witness statement, the Appellant's brother's witness statement, together with his passport and birth certificate, the Appellant's sister's witness statement together with her British passport and birth certificate, WhatsApp chat printouts between the Appellant and her partner, a subject access request revealing the Appellant's medical records and photographs showing the Appellant with her family in the UK. Ground 1 argues forcefully that the key issue in the appeal was whether or not the judge could determine the extent of the Appellant's family life with her siblings as so considered at paragraph 39 without having this key evidence from the Appellant and her siblings, which at the very least provided their written evidence in relation to whether or not family life existed, which went "beyond normal emotional ties" in pursuance of the threshold for engaging family life in light of the Court of Appeal's judgment in *Kugathas v Secretary of State for the Home Department* [2003] EWCA Civ 31, which set out whether there were any real ties and elements of dependency that could characterise an establish family life. I accept that the judge was not in a position to consider this issue without having the witness statements of those three key witnesses, at the very least on the papers. I also note that the judge complained at paragraph 17 that the Appellant had failed to provide "supporting" or "detailed" evidence which, of course, the judge might not have said had he had those supporting witness statements in the stitched bundle that was before him. With that in mind, I do find that there is a material error that goes to the heart of the human rights appeal in respect of whether or not there was family life established and also the extent of the Appellant's private life under Article 8 considering the witness statement touched upon the salient issues and whether there were or not very significant obstacles to her reintegration as touched upon at paragraph 17 of her witness statement.

8. With that in mind, I do find that Grounds 1 and 2 in respect of the very significant obstacles, are made out and consequently there is also a contingent inadvertent misdirection in law in respect of family life under Article 8 in the proportionality assessment that has taken place outside the Rules.
9. As an aside, notwithstanding that I have already found material errors of law in respect of Grounds 1 to 3, I also find that the decision is unsafe given that the Tribunal had indicated to the Appellant that the appeal would be rescheduled for a further hearing, notwithstanding that she had applied for the appeal hearing to take place on the papers. This further compounds in my view the misadministration of justice that has inadvertently taken place before the First-tier Tribunal, which in my view is an important factor (albeit not raised in the grounds), which supports my view that the matter ought to be heard *de novo* by the First-tier Tribunal in the interests of fairness and justice.
10. I therefore find that the judge has materially erred for the reasons given above, albeit entirely inadvertently.

### **Notice of Decision**

11. The Appellant's appeal is allowed.
12. The appeal is to be remitted to the First-tier Tribunal to be heard by any judge other than First-tier Tribunal Judge Davies.

**Directions**

13. The appeal is to be remitted to IAC Manchester.
14. No interpreter is required.
15. Mr Canter tells me that the Appellant, her partner, her brother and sister and one other witness may be called to give evidence. Thus, given that there may be five witnesses, I recommend that the appeal is listed for at least half a day, if not a full day to allow the Tribunal sufficient time to hear from all those witnesses and for there to be sufficient time for the judge to read all the material prior to the rehearing of this matter.
16. Upon remittal, each party is at liberty to seek any further direction that that may assist in the further management of this appeal.

*P. Saini*

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

21 June 2024