



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

Appeal Number: IA/02357/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 20 August 2015**

**Decision & Reasons Promulgated
On 15 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

Miss Awanat Oluwadamilola Abodunion Ajoke Lisa

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Appiah, counsel instructed by Omnis Legal Services

For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

ERROR OF LAW & REASONS

1. The Appellant is a national of Nigeria, born on 9 July 1983. She made an application in May 2014 for leave to remain in the United Kingdom based on her medical condition and the fact that she has a daughter who was born in the United Kingdom on 5 July 2010. This application was refused on 18 December 2014 and the Appellant appealed against this decision. Her appeal came before Judge of the First Tier Tribunal Kempton for hearing on the papers only on 13 April 2015. In a determination promulgated on 20 April 2015, the Judge dismissed the appeal on the basis that she was not in a position to allow the appeal as there was simply insufficient evidence before her; she did not have copies of the medical evidence referred to and it was a pity that the Appellant had not sought an oral hearing as she could have provided more by way of

explanation for her application had she been present to give evidence and she had not provided any further grounds of appeal or any further documents in support of her case.

2. An application for permission to appeal was made by the Appellant's solicitors on 28 April 2015 on the basis that the Judge had made a material error of law in that there were documents before him which could have resulted in a different outcome. Attached to the application for permission to appeal was an index to a bundle of documents posted to the Court and proof of recorded delivery postage dated 6 March 2015.

3. On 17 June 2015, Judge Chohan of the First Tier Tribunal granted permission to appeal on the basis that an Appellant's bundle with a covering letter of 5 March 2015 had been received by the Tribunal on 9 March 2015 and that clearly a bundle of documents had been submitted but that it appeared that it had not been placed before the Judge. It was arguable that had the said documentary evidence been before the Judge the Judge may have made a different decision and accordingly there was an arguable error of law.

4. At the hearing before me, Mr Whitfield stated that he agreed there had been a material error of law. Ms Appiah helpfully took me through the documents contained in the Appellant's bundle and I am satisfied that the error of law is material in that there is evidence contained in that bundle which may have caused the Judge to have reached a different conclusion.

5. Ms Appiah informed me that the Appellant wished to have an oral hearing. Therefore, I remit the appeal back to the First Tier Tribunal for a hearing *de novo*, not to be listed before First Tier Tribunal Judge Kempton.

Deputy Upper Tribunal Judge Chapman

20 August 2015