



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

Case No: UI-2024-002565

First-tier Tribunal Nos :  
EU/54089/2023  
LE/00713/2024

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 24<sup>th</sup> October 2024**

**Before**

**UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**GODWIN AKPOBOME OGHENEDE  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr H Rashid of Counsel instructed by Samuel Louis Solicitors

For the Respondent: Ms S Simbi, Senior Presenting Officer

**Heard at Birmingham Civil Justice Centre on 18 October 2024**

**DECISION AND REASONS**

1. This is my oral decision which I delivered at the hearing today.

**Introduction**

2. The Appellant is a citizen of Ghana. He appeals with permission against a decision on the papers of First-tier Tribunal Judge Cansick (“the Judge”) dated 21 March 2024. The Judge had refused the Appellant’s appeal against the Respondent’s decision dated 22 June 2023 to grant him pre-

settled status as the adult dependent child of his mother, Ms Osagie, an Italian national with settled status. Ms Osagie also being the Appellant's Sponsor.

### **Permission to Appeal**

3. Permission to appeal was granted by Designated Judge Shaerf in slightly unusual terms. Although the Judge had dismissed the appeal, Judge Shaerf noted that the Respondent had objected to the hearing taking place on the papers. Judge Shaerf considered that Judge Cansick had no jurisdiction to decide the appeal on the papers with reference to Rule 25(1)(a) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Judge Shaerf said the Rule did not permit consideration on the papers if one of the parties objected to such a procedure.
4. Judge Shaerf also said that it was appropriate to grant permission to appeal on the basis that the Appellant appeared to have three children in the United Kingdom and that their best interests had not been considered. Those three children appear to have the benefit of a family permit and were dependent on someone with a similar name to the Sponsor in this case. Therefore the children appear to be being sponsored by their paternal grandmother although I make clear I am not making a finding on that aspect.

### **Respondent's Rule 24 Reply**

5. The Respondent in a Rule 24 reply dated 10 June 2024 states that Judge Shaerf erred (1) by not going on to consider Rule 25(1)(g) and 25(2) of the First-tier Tribunal Rules, and (2) when stating that Article 8 or the best interests of the children matters needed to be considered because this was an EU settled status case only.
6. The Respondent submits that Judge Cansick had concluded that matter could be justly determined on the papers and therefore Judge Cansick did have jurisdiction. The Respondent submits that because the Appellant's actual grounds of appeal were rejected by Judge Shaerf, then therefore this appeal must be dismissed.

### **The Hearing Before Me**

7. In oral submissions today, Mr Rashid in clear and focused submissions set out two components. Firstly, he said that Judge Cansick did not consider paragraph 25(1)(g) of the Tribunal Rules because that Rule is not referred to in the Judge's decision. He said only paragraph 25(1)(a) is referred to. Secondly, in respect of the best interests of the children, Mr Rashid conceded and agreed that that aspect cannot properly have been the subject of the appeal, and the Rule 24 is correct in that regard. Mr Rashid did submit though that the dependency issues were not correctly considered by the Judge in this particular case.

8. Ms Simbi in her submissions relied on the Rule 24 reply. She said that fairness must apply to both sides. It was the Appellant who had asked for the matter to be dealt with on the papers. It was the Respondent who said for it to be dealt with by way of an oral hearing in the review. It was phrased in that way in the review because that is how matters are mostly dealt with. Ms Simbi submitted that the only person who could really argue fairness was the Respondent. The Respondent had asked for an oral hearing but there was no oral hearing. Ms Simbi submitted that in any event, there cannot have been said to have been a material error of law. She said that as far as the issue of dependency was concerned, there was reference to paragraph 9 of the Judge's decision. There were adequate reasons. There was a lack of evidence. The period of dependency needed to be noted, and the Appellant had already been in the United Kingdom for a month or so at the time of the decision.

### **Consideration and Analysis**

9. I assess first the jurisdiction ground of appeal because that can be dispositive of the whole appeal. Judge Cansick said at paragraph 4 as follows:

"The appellant requested, in his notice of appeal, a determination by a paper hearing. In their review the respondent requested the matter proceed to an oral hearing. They do not though state that a paper hearing would be inappropriate and if so why. I am satisfied that pursuant to rule 25(1)(a) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, a decision can be reached on this appeal without a hearing".

10. Paragraph 25 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 states as follows:

"25. (1) The Tribunal must hold a hearing before making a decision which disposes of proceedings except where -

- (a) each party has consented to, or has not objected to, the matter being decided without a hearing;
- (b) the appellant has not consented to the appeal being determined without a hearing but the Lord Chancellor has refused to issue a certificate of fee satisfaction for the fee payable for a hearing;
- (c) the appellant is outside the United Kingdom and does not have a representative who has an address for service in the United Kingdom;
- (d) it is impracticable to give the appellant notice of the hearing;
- (e) a party has failed to comply with a provision of these Rules, a practice direction or a direction and the Tribunal is satisfied that in all the circumstances, including the extent of the

failure and any reasons for it, it is appropriate to determine the appeal without a hearing;

- (f) the appeal is one to which rule 16(2) or 18(2) applies; or
- (g) subject to paragraph (2), the Tribunal considers that it can justly determine the matter without a hearing.

(2) Where paragraph (1)(g) applies, the Tribunal must not make the decision without a hearing without first giving the parties notice of its intention to do so, and an opportunity to make written representations as to whether there should be a hearing”.

11. In my judgment Mr Rashid provides a compelling argument. He submits firstly that Judge Cansick only considered paragraph 25(1)(a). That refers to each party having consented to or not objecting to the matter being decided without a hearing. Cross-referring to paragraph 4 of the Judge’s decision, the Judge stated in an inconsistent manner that on the one hand the Appellant sought a determination on the papers, but on the other hand the Respondent requested an oral review.
12. The Judge materially erred in respect of paragraph 25(1)(a). Both parties had not either consented or not objected to the case being decided without a hearing. The Respondent had asked for an oral hearing. That obviously means that there was no agreement to a consideration of the case on the papers.
13. Ms Simbi in effect has said today that the request for an oral hearing was merely a standard paragraph set out in the Home Office review document. Whether that is correct or not, but even if it is, the Judge had to abide by what was said by one of the parties to the litigation. Namely that there was no consent to a paper consideration.
14. Matters do not end there because the Secretary of State’s Rule 24 suggests that paragraph 25(1)(g) enables a Tribunal to consider the matter on the papers if it can be justly determined without a hearing.
15. That is correct, however it is necessary also to consider sub-paragraph 25(2). It states that the Tribunal must not make the decision without a hearing without first giving the parties notice of its intention to do so, and an opportunity to make written representations as to whether there should be a hearing.
16. No such notice of intention was provided to the parties and no opportunity was provided to the parties to make written representations as to whether there should be a hearing.
17. In my judgment therefore, as unsatisfactory as it is, it does mean that the Judge did not have jurisdiction to deal with the matter on the papers. It was a material error of law for the Judge to decide the matter on the papers.

18. Because that jurisdictional aspect deals with the appeal as a whole, it is not necessary to go on to consider the issues of dependency.
19. The jurisdiction matter noted by Judge Shaerf has to succeed.
20. The concession by Mr Rashid in respect of the best interests of the children does not take away from the lack of jurisdiction issue.
21. I heard from the parties in respect of the further disposal of this matter and I consider and apply the decision *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC).
22. Having considered whether to retain the matter for re-making in the Upper Tribunal relying on the general principles set out in paragraph 7 of the Senior President's Practice statement, I take into account the history of the case, the nature and extent of findings to be made, in considering paragraph 7.1 and 7.2 of the Senior President's Practice Statement and given the scope of the issues and findings to be made noting the jurisdictional issue, I consider that it is appropriate that the First-tier Tribunal re-make the decision.

### **Notice of Decision**

There is an error of law in the First-tier Tribunal's decision. That decision is set aside in its entirety.

There shall be a de novo hearing at the First-Tier Tribunal (not on the papers).

**Abid Mahmood**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**18 October 2024**