



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

Appeal Number: IA/30330/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 30 May 2014**

**Notice issued
On 2 June 2014**

**Before
UPPER TRIBUNAL JUDGE O'CONNOR**

Between

Mr Luchu Duan

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr N Goodman-Smith (non-legal representative)
For the Respondent: Mr P Deller, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant sought permission to remain indefinitely in the United Kingdom, together with his wife (IA/30316/2013), as the dependent relative of his daughter. The Secretary of State refused both applications in decisions of the 3 July 2013, making decisions to remove the appellant and his wife at the same time. The appellant and his wife appealed these decisions to the First-tier Tribunal and in a combined determination, promulgated on 28 February 2014, First-tier Tribunal Judge Greasley dismissed the appeals on all grounds. The appellant and his wife were thereafter granted permission to appeal to the Upper Tribunal by Designated Judge Zucker, in a single decision dated 14 April 2014.
2. The appellant's wife left the United Kingdom on 24 April 2014 and her appeal was consequently treated as abandoned by operation of s. 104(4) of the Nationality, Immigration and Asylum Act 2002. A notice to this effect has been promulgated under separate cover.
3. Turning back to Mr Duan's appeal, it was asserted in the grounds of application that the First-tier Tribunal Judge had indicated at the hearing that Mr Goodman-Smith could not provide evidence on behalf of the appellant. Mr Goodman-Smith attended before the Upper Tribunal and gave evidence to this effect, which Mr Deller confirmed was not the subject of challenge.

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4. I observe that at page 6 of the judge's record of proceedings the following is stated "*Mr Roger wanted to add. Supplen replies to sp. Explained he cannot*". During the determination the judge referred to Mr Niger Goodman-Smith as Roger Goodman-Smith [25]. As far as I have been made aware there was no person in attendance at the hearing before the First-tier Tribunal named 'Roger'. Consequently I infer that the reference to 'Mr Roger' at page 6 of the judge's record of proceedings is in fact reference to Mr Nigel Goodman-Smith. On my reading of the above record it supports the account given Mr Goodman-Smith of the events said to have occurred before the First-tier Tribunal.
 5. Mr Deller accepted that the First-tier Tribunal's refusal to allow Mr Goodman-Smith to give evidence had, in the circumstances of this case, led to procedural unfairness such that the First-tier Tribunal's determination must be set aside and the appeal remitted back to the First-tier Tribunal to be determined afresh by a judge other than Judge Greasley. This concession is entirely appropriate on the facts of this case. No good reason has been identified by the judge for refusing to allow Mr Goodman-Smith to provide evidence and there is nothing objectionable *per se* about a non-legal representative also providing evidence to the Tribunal [see HH Serbia [2006] UKAIT 00063].

Decision

The determination of the First-tier Tribunal in relation to Mr Duan is set aside for the reasons set out above. Mr Duan's appeal is remitted to the First-tier Tribunal to be determined afresh by a judge other than Judge Greasley.

The hearing of the appeal has been listed for 4 November 2014 at Hatton Cross hearing centre.

Signed:



Upper Tribunal Judge O'Connor
Date: 30 May 2014