



**Upper Tribunal  
(Immigration and Asylum Chamber)** Appeal Number: HU/21764/2018

**THE IMMIGRATION ACTS**

**Determined on the papers:  
22 November 2019**

**Decision & Reasons  
Promulgated  
On 28 November 2019**

**Before**

**UPPER TRIBUNAL JUDGE O'CONNOR**

**Between**

**JDK  
(Anonymity Direction Made)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Anonymity Direction**

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. No report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings. Liberty to apply.

**DECISION AND REASONS**

1. The appellant is a national of Ghana, born 28 April 2002. She appealed to the First-tier Tribunal against the Entry Clearance

Officer's decision of the 13 September 2018, refusing to grant entry clearance pursuant to paragraph 297 of the Immigration Rules. The decision was treated as a refusal of a human rights claim and, thus, provided for a right of appeal to the First-tier Tribunal.

2. The appeal came before the First-tier Tribunal on 25 July 2019, at which time the appeal was dismissed on the basis that the appellant's mother (and sponsor) was not present and settled for the purposes of the immigration rules (a requirement under paragraph 297) because she had obtained permanent residence in the UK as a consequence of being the wife of an EEA national. No other issues were considered by the FtT.
3. In her Rule 24 response the SSHD accepts, contrary to the finding of the FtT, that *"the appellant's sponsor, a non-EEA national in possession of a permanent residence card issued under the EEA Regulations, is 'present and settled' as defined by paragraph 6 of the immigration rules"* and thus for the purposes of paragraph 297 of those Rules. It is accepted, as a consequence, that the decision of the First-tier Tribunal should be set aside and that the appeal should be remitted to the First-tier Tribunal to determine afresh.
4. I concur fully with the SSHD's suggested course, and the reasoning behind such suggestion.
5. I also make the further observations that, irrespective of the aforementioned obvious error, the First-tier Tribunal did not, in any event, complete the task required of it in that it did not determine the human rights appeal before it. Indeed, there is not a single mention in the FtT's decision of the only relevant ground in the appeal i.e. that the decision of the Entry Clearance Officer leads to a breach of the appellant's protected rights under Article 8 ECHR.

## **Decision**

The decision of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal to determine afresh

Signed: Upper Tribunal Judge O'Connor



Date: 22 November 2019