



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/08974/2018**

Appeal No's:

PA/05468/201

8

THE IMMIGRATION ACTS

Heard at Glasgow

Decision and Reasons

Promulgated

On 11 July 2019

On 16 July 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

A M N & L M

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Aslam, of McGlashan MacKay, Solicitors

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

DETERMINATION AND REASONS

1. The appellants are husband and wife, both citizens of the DRC. There are procedurally two appeals, but in substance the wife's appeal depends entirely on her husband's. Rather confusingly, and for no apparent reason, FtT Judge Clough issued two separate decisions dismissing the appeals, both promulgated on 22 February 2019. Two applications for permission to appeal to the UT were made, but on the same grounds, relating to the first appellant's case. Permission was granted on 1 May 2019.
2. Some of the confusion can be traced back to the appellants, through their previous agents, submitting separate but overlapping appeals and inventories of productions for each appellant, at least one supplementary inventory, and further separate items.

3. Mr Aslam submitted that the judge's principal reason for holding against the first appellant was that stamps on his passport showed that he returned on various occasions to the DRC, and there was an error of failing to deal with the explanation he advanced at paragraph 12 of his witness statement dated 14 September 2018.
4. The inventory of productions containing that statement does not appear to be on the FtT's files, but the judge must have seen it, because she refers to it by its date at paragraph 15.
5. Mr Aslam showed that there are other items of relevant evidence which were or should have been before the FtT, but which are not mentioned in the decision.
6. In course of submissions, Mr Diwyncz conceded that while the explanation mentioned above is not one the judge was bound to accept, she should have dealt with it; it could not be said that the FtT dealt with all the materials which were, or should have been, before it; and the decision could not safely stand.
7. The responsibility appears to have been partly due to the judge, and perhaps also to administrative mishap, and a failure all round to be clear that parties and the FtT had the relevant materials before them. It is unnecessary to try to apportion the blame any further.
8. Mr Aslam was confident that his firm has all the material necessary to assemble a comprehensive set of evidence to place before a future hearing.
9. The following outcome was agreed.
10. The decision of the FtT is set aside. It stands only as a record of what was said at the hearing. The nature of the case is such that it is appropriate under section 12 of the 2007 Act, and under Practice Statement 7.2, to remit to the FtT for an entirely fresh hearing. The member(s) of the FtT chosen to consider the case are not to include Judge Clough.
11. The appellants are to file with the FtT and copy to the respondent within 21 days of this date a complete and combined set of all the evidence on which they rely, prepared in accordance with Practice Direction 8.
12. The hearing in the FtT will be not less than 14 days thereafter.
13. Unless and until a tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



11 July 2019
UT Judge Macleman