

**Upper Tribunal
(Immigration and Asylum
2021-001225**



Chamber) Appeal Numbers: UI-

EA/01495/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 17th March 2022**

**Decision & Reasons Promulgated
On 4 November 2022**

Before

**UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE O'RYAN**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**FESTUS OTI FRIMPONG
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: No attendance, litigant in person

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. In a decision promulgated on 8th November 2021 First-tier Tribunal Judge S J Clarke ("the judge") dismissed the appellant's appeal against the Secretary of State's decision dated 12th January 2021. The Secretary of State refused the appellant's application for a derivative residence card on 14 November 2020 for confirmation he is the primary carer of a British citizen dependant, FAOF, born on 6 February 2018. The thrust of the refusal was that the Appellant failed to show he is the primary carer, and the child would leave the UK/EU if the Appellant were to leave the UK.

The appellant's challenge to the judge's decision, which was made on the papers, was made on the following grounds:

- (i) the judge failed to apply relevant caselaw
 - (ii) the judge failed to consider the documentary evidence filed with the First-tier Tribunal
2. Permission to appeal was granted on the basis that it was arguable that the judge had overlooked, or had failed adequately to address in the decision, the material filed by the appellant. The judge referred to the respondent's bundle, the decision letter and the grounds of appeal but not to the material filed subsequently by the appellant (decision, para. 4). The judge stated there was "no supporting evidence" (para. 6), without explaining why the material filed did not support the appellant's contentions. The judge referred to the appellant's "lack of participation" (ibid), a phrase arguably inapposite where the appellant has filed written evidence.
3. Although the appellant objected to a hearing in person before the Upper Tribunal and requested that the matter be dealt with on the papers, the appellant was notified of the date, time and venue and the matter proceeded as an oral hearing. At that hearing before us Mr Melvin accepted that it appeared that the appellant filed documents with the First-tier tribunal which were not considered by the judge. Indeed, the bundle before us and described as the 'appellant's bundle' before the First-tier Tribunal bundle contained a variety of documents not least a witness statement of the appellant.
4. We conclude that there was indeed a procedural error in the consideration of the appellant's paper appeal. The appellant had filed documentation with the First-tier Tribunal which was not considered by the judge. We set aside the decision. As the error comprised a procedural error, the matter should be returned to the First-tier Tribunal for a hearing de novo.
5. The Judge erred materially for the reasons identified. We set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Signed Helen Rimington

Date 25th October 2022

Upper Tribunal Judge Rimington