



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

Case No: UI-2021-001282

First-tier Tribunal No: HU/05981/2020

**THE IMMIGRATION ACTS**

**Decision Issued:**  
**On 11 August 2023**

**Before**

**UPPER TRIBUNAL JUDGE OWENS**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**SSK**  
**(ANONYMITY ORDER MADE)**

Respondent

**DECISION ON APPLICATION UNDER RULE 42 AND 43**

1. On 19 April 2021, First-tier Tribunal Judge Abebrese allowed SSK's appeal against a decision of the Secretary of State refusing his human right's claim and EEA claim.
2. Following a grant of permission, on 1 September 2022 Upper Tribunal Judge Owens set aside the decision of the First-tier Tribunal in its entirety and remitted the appeal to be heard de novo with no findings preserved.
3. The appeal was accordingly remitted to the First-tier Tribunal.
4. On 9 September 2022, SSK submitted an application pursuant to rule 42 and 43 of the Tribunal Procedure (Upper Tribunal) Rules 2008. This appears to have been entered onto the internal administrative system on 21 November 2022. At this point Upper Tribunal Owens was on sick leave and unfortunately the application became lost in the system and was not drawn to the attention of a judge until 10 August 2023 after an urgent chasing email was received.
5. By way of an email dated 10 August 2023 SSK's representative indicated that the rule 43 application was withdrawn because the question of EEA jurisdiction remained live before the First-tier Tribunal.

6. The only application before the Upper Tribunal remaining is the application pursuant to rule 42 which states as follows:

Clerical mistakes and accidental slips or omissions

42. The Upper Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision or record of a decision by—

(a) sending notification of the amended decision, or a copy of the amended record, to all parties; and

(b) making any necessary amendment to any information published in relation to the decision or record.

7. It is asserted that the UTJ Owens made a clerical mistake when she remitted the appeal to the First-tier Tribunal to be heard de novo with no findings preserved and that paragraphs 40, 42 and 46 should be corrected. This is because First-tier Tribunal Judge Abebrese made a finding at [16] of his decision that SSK and his family were credible witnesses. It is conceded by SSK that there is a lack of findings.
8. Paragraph 40 states: “There is also a failure to make clear and unambiguous findings.”
9. Paragraph 42 states: “I am satisfied that the decision should be set aside in its entirety with no findings preserved.”
10. Paragraph 46 states: “The decision is set aside in its entirety with no findings preserved”.
11. These statements cannot be categorised as “accidental slips” or “omissions”.
12. Having considered the decision of First-tier Tribunal Judge Abebrese UTJ Owens was satisfied that that there had been an error on a point of law which was material to the outcome of the appeal such that the decision should be set aside in its entirety in order for fresh findings to be made. This was an appropriate course of action where few findings had been made at the First-tier Tribunal, there had been a considerable passage of time and the human rights appeal would fall to be determined as at the date of the remitted hearing. These paragraphs form part of the decision and are quite deliberate.
13. The rule 42 application is misconceived because there is no accidental slip or omission to be corrected.

**R J Owens**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**11 August 2023**