



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

Appeal Number: AA/04817/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 15 December 2014**

**Determination Promulgated
On 22 December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AN (DRC)

Respondent/Claimant

Representation:

For the Secretary of State: Mr E Tufan, Specialist Appeals Team

For the Respondent/Claimant: None

DETERMINATION AND REASONS

1. The Secretary of State has appealed to the Upper Tribunal from the decision of the First-tier Tribunal allowing the claimant's appeal against the decision by the Secretary of State to refuse to grant him a further period of discretionary leave to remain, having previously granted him leave to remain as an unaccompanied asylum seeking minor, whose asylum claim has been rejected but in respect of whom at the date of the grant there were not adequate reception facilities for him in his country of return. The First-tier Tribunal made an anonymity direction, and I

consider it is appropriate to maintain anonymity for these proceedings in the Upper Tribunal.

2. Following a hearing at Taylor House on 14 August 2014, First-tier Tribunal Judge C M Phillips dismissed the claimant's appeal on asylum, humanitarian protection and human rights grounds, but allowed the appeal outside the Rules under Article 8 ECHR. The judge found that the claimant did not qualify for further leave under either the Appendix FM or Rule 276ADE routes, applying **Ogundimu (Article 8 - new rules) Nigeria [2013] UKUT 0060 (IAC)**. She also found that the claimant had at least one adult family member in the DRC with whom he could potentially re-establish contact. But she allowed the appeal outside the Rules on the basis that, although the claimant was now aged over the age of 20, he was "a vulnerable young adult who has not proved himself capable of independent living".

The Grant of Permission to Appeal

3. On 21 October 2014 Upper Tribunal Judge Warr granted the Secretary of State permission to appeal on all grounds raised.

The Hearing in the Upper Tribunal

4. At the hearing before me, Mr Tufan produced a letter dated 22 September 2014 which had been sent by UK Visas and Immigration (West Midlands) to the claimant. This letter informed him that his claim had been reviewed, and it had been decided that the Secretary of State's discretion should be exercised in his favour: he had been granted limited leave to remain in the United Kingdom for a reason not covered by the Immigration Rules.
5. Mr Tufan explained that he only discovered the existence of this letter when preparing for the hearing on Friday. So far as he was concerned, the letter had been issued in error. The proper procedures had not been followed by the local immigration team in the West Midlands. They should not have issued the letter when the Specialist Appeals Team was pursuing an appeal from the decision of the First-tier Tribunal which had, apparently, triggered the issuing of the letter of 22 September 2014.

Discussion

6. The error of law challenge has prima facie merit, and it is clear from the chronology that the letter of 22 September 2014 was issued in error. But the grant of further discretionary leave to remain has not been withdrawn, and there is no suggestion from Mr Tufan that the Home Office has any plans to withdraw the grant of further discretionary leave to remain. So I consider that the appeal should be treated as abandoned pursuant to Section 104(4A) of the Nationality, Immigration and Asylum Act 2002 and Rule 17A of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Decision

7. The appeal is abandoned.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed

Date **15 December 2014**

Deputy Upper Tribunal Judge Monson