



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

Appeal Numbers: OA/21666/2013

THE IMMIGRATION ACTS

**Heard at: Field House
On: 19 February 2016**

**Decision and
Promulgated
On: 8 April 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**MR AKEEM MORENIKEJI OGUNADE
(ANONYMITY DIRECTIONS NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Emesez Legal Representative
For the Respondent: Mr L Tarlow, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on 19 April 1966. He appealed to the First-tier Tribunal against the decisions of the respondent dated 29 October 2013 to refuse his application for entry clearance as the spouse of his sponsor, a British citizen under paragraphs EC-P.1. of Appendix FM.
2. First-tier Tribunal Judge Kanith dismissed the appellant's appeal in a determination dated 20 August 2015. Permission to appeal was granted by First-tier Tribunal Judge Ramsey in a decision dated 21 January 2016, stating that it is arguable that the Judge fell into error in not granting the appellant an

adjournment set against the facts available to the Judge as referred to in the decision.

3. Thus the appeal came before me.

The findings of the First-tier Tribunal

4. The First-tier Tribunal refused to give the appellant an adjournment on the following basis which I summarise. On the day of the hearing, the appellant's legal representatives did not attend. The appellant's solicitors were contacted by the Tribunal clerk. He was advised that the solicitor representing the appellant, Mr. Emezie would not be in a position to attend today because of the train strike. The Judge and noted that the Tribunal subsequently received a faxed letter at 10:56 AM which stated that due to the train strike, "our client has been unable to reach the court. in the interest of justice for our client, we kindly ask that the case scheduled to be heard today be adjourned".
5. The Judge noted in his determination that "the appellant explained that she spoke to her legal representative over the telephone yesterday. She was at a loss how she was going to arrive at the hearing centre. She said that she would arrange for a taxi and that is how she attended the hearing centre to date. The appellant stated that she was not advised that her legal representatives would not be in a position to attend the hearing centre today. She did not seek an application to adjourn and had a copy of the relevant papers in front of her.
6. The Judge noted "in connection with the London underground industrial action, it has been well publicized for over a week that industrial action was to commence from 18.30 hours... I am therefore perplexed as to why the appellant's legal representative did not make alternative arrangements to ensure that the appellant was represented. The sponsor has made arrangements to arrive at the Tribunal centre in good time".
7. The Judge noted, "the appellant's legal representatives have shown a lack of pre-planning and disregarding making appropriate arrangements to attend the hearing centre. At the very least, once they realize that they may face difficulties with respect to nominating an alternative advocate to attend, they should have contacted the Tribunal as a matter of urgency and in advanced of the hearing date.
8. The Judge concluded "upon the careful consideration of the above factors I determine that it would be appropriate to proceed with the appeal and that there would be no prejudice to either the appellant or his sponsor.

The grounds of appeal

9. The appellant's grounds of appeal state that the Judge had by not allowing the application for an adjournment fell into material error.

The hearing

10. At the hearing I heard submissions from both parties. Mr.Emesie said that he lives in Essex and it would have been impossible for him to have reached Hatton Cross even by a taxi. He said in any event it was not the appellant fault and he should not be prejudiced.
11. Mr. Tarlow on behalf of the respondent stated that there are many discrepancies in the appeal and even if the legal representative had been at the hearing, it would not have made any difference to the outcome.

Decision as to whether there is a material error of law in the determination

12. The appellant complains that the Judge should have granted an adjournment because his legal representative he could not attend the hearing because of a tube strike. Therefore, the issue raised by the appellant in his grounds of appeal is procedural fairness.
13. The appellant made an application for an adjournment on the bases that there is a tube strike. Therefore, he relied on evidence in support of that application which he was bound to do. The Judge considered this evidence and decided that he would not grant a late application for an adjournment, as the appellant's legal representative would have made alternative arrangements to attend court notwithstanding the tube strike.
14. The Judge stated that there would be no prejudice either to the appellant or his sponsor to continue with the appeal without the appellant's legal representative. He gave no reasons for why the absence of a legal representative to put forward the appellant's case, would not prejudice the appellant.
15. I do not accept the respondent's response that even if the legal representatives would have been present, it would have made no difference to the appeal given the inconsistencies in the evidence. Where there has been procedural unfairness, the merits or lack thereof cannot remedy the error.
16. The Judge did not consider the overriding objective carefully and warn himself that there is a need to ensure fairness on both parties when deciding adjournment request and to seek flexibility and avoid formality and that the interests of the parties to the proceedings and the wider public interest must be considered. Failure by the judge to consider whether lack of representation would be unfair to the appellant, fell into material error.

17. I therefore set aside the decision and remit it to the First- tier Tribunal for a full hearing.

DECISION

Appeal is remitted to the First-tier Tribunal.

Signed by

A Deputy Judge of the Upper Tribunal
Mrs S Chana

This 20th day of March 2016