Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/37123/2014
& IA/37125/2014

THE IMMIGRATION ACTS

Decision issued
On 26th July 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

A O FAYOYIN & O OLAEKAN

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Decision on application to set aside under rule 43

1. This decision should be read along with the UT's decision on error of law issued on 9 November 2016, determination dated 6 January 2017, and directions dated 16 January 2017.

2. By letter dated 12 January 2017 the appellants seek to have the determination set aside.

3. UT records show that notice of the hearing on 6 January 2017 was issued to the appellants, to their representatives, and to the respondent.

4. The notice was received by the respondent.

5. Even if neither appellants nor representatives received that notice, the date of hearing was clearly indicated on the error of law decision issued on 9 November 2016, which the appellants and their representatives did receive.

6. Nothing happened thereafter which might have made it reasonable for the appellants or their representatives to assume that the hearing would not proceed on 6 January 2017.

7. No procedural irregularity has been shown. By reference to rule 43 (1) (b) and (2), the UT is not entitled to set aside its determination.

8. Even if any procedural irregularity could be derived from the foregoing circumstances, I would not find that the interests of justice require the decision to be set aside, for two reasons.

9. The first reason is that the appellants have had a fair opportunity to make their case.

10. The second reason is that it is not shown that there might in law have been any outcome more favourable to the appellants than the situation in which they presently find themselves.

11. The appellants refer in this application to "the protection and remedy available where the rightful continuation of studies has been unlawfully truncated by the respondent", but they have been wholly vague about what that remedy might be, its foundation in law, and the jurisdiction of the FtT or UT to grant it.

12. The appellants blame their situation on historic error and delay by the respondent (although it might equally be attributed to their own delay and intransigence), but they are unable to bring their case within the requirements of the immigration rules, and it remains difficult to discern entitlement to remain in the UK under article 8 of the ECHR, without complying with the terms of rules (unless based on concession by the respondent, for reasons falling short of an article 8 right).

13. Putting that difficulty aside, the practical position is that the first appellant now says that he has at last found a PhD place. It is open to him to make an application to the respondent, showing that it meets the requirements of the rules, other that the requirement to apply from outside the UK, and asking the respondent to waive that particular requirement. The respondent will be bound to deal with that request on its merits. Such an outcome is as much as the appellants could reasonably expect. Assuming there is a remedy within the UT's jurisdiction, it would be no more than to allow him to make that application.

14. The UT declines to set aside its determination dated 6 January 2017. That determination stands.

10 February 2017
Upper Tribunal Judge Macleman