



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

Appeal Numbers: HU/07856/2016
HU/07857/2016
HU/07880/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 7 February 2018**

**Decision & Reasons Promulgated
On 6 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**EMMANUEL [N]
NWANDO [N]
OBIESIE [N]
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellants: Mr D Akinpelu, Spring Solicitors LLP

For the Respondent: Ms Z Ahmad, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellants in this case are citizens of Nigeria. The first appellant was born on 29 July 1963. He applied for entry clearance as a partner under Appendix FM of the Immigration Rules. That application was refused on the basis that it was not accepted that the relationship between the

appellant and his sponsor, Nneka [N] was genuine and subsisting. It was further not accepted that the appellant met the financial requirements. The second and third appellants are the children of the appellant and sponsor born in 2001 and 1998 respectively. The decisions under appeal were made on 18 February 2016.

2. The appellants appealed to the First-tier Tribunal. In a decision promulgated on 21 June 2017, First-tier Tribunal Judge Davidson dismissed the appellants' appeals under the Immigration Rules and Article 8.
3. The appellants appealed with permission on the grounds that:
 - (1) The appellants were unaware of the hearing notice and were therefore unaware of the hearing on 12 June 2017 and subsequently unaware of the Tribunal's determination until an email was received from the Tribunal on 25 September 2017 (following the appellants' enquiries to the Tribunal).
 - (2) The appellants had not had a fair hearing in the circumstances and that a rehearing was required.

Error of Law Discussion

4. The sponsor did not attend the hearing on 12 June 2017 at Hatton Cross, neither were the appellant represented. The Judge of the First-tier Tribunal notes, at [7] of the decision and reasons, that:

"In the absence of the Sponsor or any representative of the Appellants at the hearing, no oral evidence was given which could be tested in cross-examination."
5. The Tribunal file contained a number of emails between the appellant in Nigeria and the Tribunal. This included an email on 21 September 2017, following an enquiry by the appellant as to when his appeal would be listed (bearing in mind that this was after the decision of the First-tier Tribunal), indicating that the IA30 Notice of Hearing had been issued to all of the parties (the appellant at his address in Nigeria and his wife as well as to the respondent) on 15 March 2017.
6. However, the Tribunal noted that the "appellant's wife's copy of the IA30 was returned to the Tribunal on 18 April 2017 as 'undelivered'. Although there was no specific indication that the IA30 issued to the appellant in Nigeria was returned as undelivered, subsequent correspondence notes that further the Tribunal's decision was returned undelivered from the appellant in Nigeria. It is unclear what the specific difficulty was and it is particularly unfortunate that both the appellant and his sponsor appeared to be having difficulty with their post and I note that the sponsor remained at the same address throughout this period although she has now moved to a different London address.
7. However, Ms Ahmad did not seek to defend the First-tier Tribunal decision with any force, leaving it a matter for the Upper Tribunal. She accepted

that if the Upper Tribunal was not satisfied that the Tribunal's notices were properly served, the decision of the First-tier Tribunal could not stand. I am of the view that there is sufficient doubt over service, including as indicated by the Tribunal in its own correspondence indicating that Notices to both the appellant and the sponsor had been returned undelivered, such that the only fair outcome is to set aside the decision of the First-tier Tribunal and remit the appeal for a fresh hearing before the First-tier Tribunal.

8. Equally, even if I had not been satisfied that it was in the interests of fairness that the decision of Judge Davidson be set aside, the judge's findings and reasons, at [15] of the decision and reasons amount to one paragraph and three and a half lines and simply indicate that the appellants had not discharged their burden of proof and again made reference to the lack of oral evidence. However, there was no engagement with any of the documents which had been submitted and were in the respondent's bundle in connection with the application.
9. If a Tribunal does not accept the evidence before it, including documentary evidence, it must say so in the decision and reasons and the Tribunal must give reasons for those findings. A bare statement that a document was not accepted, or as is the case in this appeal, that there was no appearance by witnesses, without any engagement with the other evidence, is insufficient. The appellant is entitled to know the basis of the facts on which the conclusion has been reached to dismiss their appeal. The requirement to give reasons is not a requirement for a detailed answer to every argument, and a Tribunal's reasons need not be extensive if a decision makes sense (**Shehzad [2013] UKUT 35 (IAC)**). However I am not satisfied that the First-tier Tribunal provided adequate reasons for dismissing the appellants' appeal and for preferring the respondent's refusal letter over the appellants' evidence, if that was the case (see also **MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC)**).

Notice of Decision

10. The decision of the First-tier Tribunal contains an error of law and is set aside. No findings are to stand, Under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2, the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal. The member(s) of the First-tier Tribunal chosen to reconsider the case are not to include Judge Davidson.

Although one of the appellants is a minor no details are disclosed and I do not make an anonymity direction is made.

Signed

Date: 2 March 2018

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

No fee award was sought or is made.

Signed

Date: 2 March 2018

Deputy Upper Tribunal Judge Hutchinson