



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

Appeal Number: HU/19114/2018
HU/19102/2018
HU/19251/2018
HU/22492/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 23 September 2019**

**Decision & Reasons Promulgated
On 13th November 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

(1) ADEYEMI [A]

(2) [T S A]

(3) [J E A]

(4) [J P A]

(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr M Sandhu, Solicitor

For the Respondent: Mr P Singh, Home Office Presenting Officer

REMITTAL AND REASONS

Introduction

1. This is the Appellants appeal against the decision of First-tier Tribunal Judge Lucas (the judge) promulgated 23 April 2019, dismissing their appeals, against the decision(s) of the Respondent, dated 15 October 2018, refusing their application(s) to remain in the United Kingdom on human rights grounds.
2. The Appellants are nationals of Nigeria, father and dependant adult children, respectively born on 11 April 1963, 24 April 2005, 31 August 2002 and 6 August 2000. They are a family unit enjoying family life together in the United Kingdom. Their applications were refused because none of the Immigration Rules were met, there were no exceptional circumstances and no compassionate factors to warrant a grant of leave outside of the Immigration Rules.

Hearing before the First-tier Tribunal

3. The Appellants did not attend the hearing but were represented before the judge by Counsel Mr Mian. The judge refused Mr Mian's application for an adjournment because no evidence of the first Appellant's inability to attend the hearing because of ill health was produced. The judge observed that a previous application had been refused by the First-tier Tribunal prior to the hearing. The judge went on to consider and dismiss the appeal on the basis of the Appellants failure to prosecute it and, noted in particular the First Appellant's failure to file any evidence; his failure to provide instructions to his solicitors and his failure to attend the hearing without good reason.

Grant of Permission to Appeal

4. The Appellants sought and were granted permission to appeal because it was considered arguable that (a) the appeal should have been adjourned because of the First Appellant's ill health (b) the judge had not considered a 141 page bundle which had been submitted and, c) the judge considered the appeals in a superficial manner.

Hearing(s) before the Upper Tribunal

5. The appeal first came before Deputy Upper Tribunal Judge (DUTJ) Manuell on 25 July 2019. The Appellants were represented on that occasion by their Counsel Mr Mian. DUTJ Manuell noted that the First-tier Tribunal file contained no record of receipt by it of any bundle consisting of 141 pages

or otherwise. DUTJ Manuell observed that Mr Mian was seeking to give evidence about various matters surrounding the hearing and had not prepared a witness statement. This was rightly viewed as unsatisfactory and the hearing was converted into a Case Management Review Hearing. Directions were issued in order to facilitate a fact finding exercise to determine what occurred at the Hearing before the judge.

6. DUTJ Manuell did not reserve the matter to himself and thus the matter came before me to decide in the first instance whether the judge materially erred in law.

Discussion and Decision

7. Following a useful discussion at the hearing with the parties, Mr Singh rightly accepted that the judge materially erred in law.
8. Mr Sandhu produced satisfactory evidence demonstrating that a 141 page bundle was faxed to the First-tier Tribunal a day before the hearing. Given its late filing it was not placed on file and the judge, through no fault of his own, failed to consider whether that evidence could be adduced and considered on behalf of the Appellants. In view of the uncontroversial evidence that a bundle was filed before the Hearing, the judge's finding that the First Appellant had failed to "*engage with the appeal process and has submitted no evidence*" was plainly incorrect. In the circumstances, I am satisfied that a procedural irregularity has occurred giving rise to unfairness.
9. Even absent that error, I am satisfied that the judge materially erred in other respects. The judge was ceased with an appeal concerning a family unit comprising of a father and his three children. While the children were young adults by the date of Hearing before the judge, they had lived in the United Kingdom for a continuous period of 7 years and each had advanced claims under the Immigration Rules on private life grounds. The basis of that claim and its particulars were to some extent set out in the Appellants' representatives' letter of 20 October 2017 addressed to the Respondent in support of the application.
10. The judge's decision is very brief. The decision and reasons are confined to two pages of unnumbered paragraphs in bullet points much of which focuses on the application for an adjournment, the First Appellant's absence at the Hearing and his failure to file any evidence. There is a cursory reference to the Respondent's refusal in respect of the First Appellant only and no reference at all to the circumstances of the other Appellants or indeed to the written submissions that were made on their behalf. In the circumstances, I am satisfied that the judge was in clear error in dismissing the appeal without consideration to the evidence and submissions that were before him.

11. I find that the Appellants have not had a fair hearing. In the circumstances, I set aside the judge's decision and remit the appeal with the consent of the parties to the First-tier Tribunal to consider afresh.

Notice of Decision

The decision of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal to be determined afresh by a judge other than Judge Lucas.

Signed:

Deputy Upper Tribunal Judge Bagral
2019

Date: 20 October