



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

Appeal Number: PA/11030/2017

**THE IMMIGRATION ACTS**

**At: Bradford  
On: 10th December 2018**

**Decision Promulgated  
On: 18<sup>th</sup> February 2019**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**The Secretary of State for the Home Department**

Appellant

**And**

**Chido [V]  
(no anonymity direction made)**

Respondent

**For the Appellant: Ms Pettersen, Senior Home Office  
Presenting Officer  
For the Respondent: Mr Davison, Ison Harrison Solicitors**

**DECISION**

1. The Respondent (Mr [V]) is a national of Nigeria born in 1966. On the 20<sup>th</sup> June 2018 the First-tier Tribunal (Judge Cox) allowed his deportation appeal on human rights and protection grounds. By order of Judge Nightingale dated the 26<sup>th</sup> September 2018 the Secretary of State was purportedly granted permission to appeal against that decision on protection grounds only, Judge Nightingale finding no arguable error in Judge Cox's findings on Article 8.

2. Before me Mr Davison resisted the grounds on two fronts. He submitted that there was nothing wrong with the First-tier Tribunal's approach to the question of protection, but his primary case was that permission should not have been granted because the application should never have been admitted.
3. The determination of the First-tier Tribunal was served on the 20<sup>th</sup> June 2018. The deadline for an application for permission to appeal was therefore the 4<sup>th</sup> July 2018. The Secretary of State did not make his application until the 7<sup>th</sup> September 2018. In her decision to grant permission, Judge Nightingale describes this as an "in time" application, and makes no reference to the fact that the application was in fact being made some two months past the deadline set by the Procedure Rules.
4. Upon receipt of Judge Nightingale's decision Mr [V]'s representatives wrote to the Tribunal pointing out that she had failed to address the issue of timeliness. Their letter is dated the 16<sup>th</sup> October 2018. The Tribunal responded on the 25<sup>th</sup> October 2018 as follows:

"... if the appellant wishes to argue that the First-tier Tribunal grant of permission is conditional upon a decision whether time should be extended, that case should be made at the error of law hearing. The parties are referred to the case of Samir (First-tier Tribunal Permission to Appeal: Time) [2013] UKUT 00003".
5. Before me Ms Pettersen conceded that Judge Nightingale does appear to have erred in failing to address timeliness. She accepted that it was open to me, following Samir, to assess the question of timeliness myself, and invited me to do so.
6. Ms Pettersen relied on the grounds as drafted by Mr Zukunft of the Special Appeals Team in London. Mr Zukunft acknowledges that the delay in the grounds being lodged is significant but submits that permission should nevertheless be granted for the following reason:

"... this application was received by the Specialist Appeals Team on the 4<sup>th</sup> September, the message attached from Bradford IAC was '*please find attached determination as per request, not sure why you have not received this determination*'. The reason for the delay is not known or where the fault lies and it would not be appropriate to speculate"
7. This then was the Secretary of State's case: the determination had not been served upon the Home Office until the 4<sup>th</sup> September and this was the reason for the delay.

8. Mr Davison provided me with a copy of the 'IA60' dated the 20<sup>th</sup> June 2018. This is a covering letter that is sent out with all First-tier Tribunal decisions. In this case that document indicates that on the 20<sup>th</sup> June 2018 the determination was sent to Ison Harrison Solicitors, and it was copied to the Presenting Officers Unit in Leeds. Ms Pettersen accepted that this would be in line with normal practice, which would be that Bradford IAC would send any determinations to the Presenting Officers Unit which dealt with those cases, i.e. the office in Leeds. She was not aware of any practice of the determination being sent directly to the Specialist Appeals Team in London.
9. Mr Davison submits that the burden lies on the Secretary of State so show good reason for such a significant delay. He submits that in circumstances where the IA60 clearly indicates that the determination was properly served on the POU in Leeds on the 20<sup>th</sup> June, the fact that the Specialist Appeals Team in London did not see it until the 4<sup>th</sup> September 2018 is neither here nor there. He has a good point. Mr Zunkunft's grounds very specifically refer to the decision only arriving at the Special Appeals Team in September. The grounds are silent as to whether the IA60 is wrong or the POU in Leeds ever received the decision. Ms Pettersen had nothing from the POU to contradict the face of the IA60. In those circumstances the Secretary of State has not shown good reasons for the delay and I refuse to admit the application.
10. The Secretary of State's application for permission is not admitted.

Upper Tribunal Judge Bruce  
10<sup>th</sup> December

2018