Upper Tribunal

(Immigration and Asylum Chamber) **Appeal number: EA/04771/2019 (V)**

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC **Decision & Reasons Promulgated**

On 14 May 2021 **On 28 May 2021**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

TEMILADE WILLIAMS

(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

For the appellant: Mr M West, instructed by JA Batula Solicitors

For the Respondent: Mr A Tan, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote

hearing. At the conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a national of Nigeria with date of birth given as 22.1.85, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 2.2.21 (Judge Bennett), dismissing on all grounds her appeal against the decision of the Secretary of State, dated 29.8.19, to refuse her application for an EEA Residence Card as the Extended Family Member (EFM) of her half-brother Mr Taofik Alabi Adewale (Mr A), a national of Eire resident in the UK, pursuant to Regulations 8 and 18 of the Immigration (EEA) Regulations 2016, as amended.

2. In summary, the grounds of application for permission to appeal to the Upper Tribunal argue first that the First-tier Tribunal Judge erred in law in refusing the adjournment application made during the remote appeal hearing when the quality of the appellant's video connection was poor so that she was unable to effectively participate in the hearing. The second ground complains that the decision of the First-tier Tribunal was "too long".

3. Permission to appeal to the Upper Tribunal was granted by the First-tier Tribunal on 24.2.21, on ground 1 only, the judge considering it arguable that the judge erred in refusing to adjourn given the technical difficulties outlined at [16] and [17] of the decision. The judge refused permission on ground 2, considering that whilst at 38 pages it was a lengthy decision in what appeared to be a simple case, it was not arguable that this factor alone amounted to a procedural error.

4. The Upper Tribunal has received the respondent's Rule 24 reply, dated 11.3.21, and has also considered Mr West's skeleton argument, dated 22.1.21, evidently prepared for the First-tier Tribunal appeal hearing.

5. I have carefully considered the decision of the First-tier Tribunal in the light of the various submissions and the grounds of application for permission to appeal to the Upper Tribunal.

6. In summary, the grounds argue first that the judge erred in refusing the appellant's representative's adjournment application "as evidence could not properly be given by the appellant and Sponsor, nor be heard properly by the Tribunal, HOPO, and counsel for the appellant." The second ground argues that "The determination is arguably unclear, not readily comprehensible, and prolix."

7. In relation to the decision to refuse the adjournment application, it can be seen from the decision itself at [16] that there were difficulties in taking the appellant's oral evidence. In summary, there was a lengthy delay between questions put to her and the answers given and her 'image' regularly froze. Eventually, it was

arranged that she telephone in to the hearing. Even then there were difficulties with the sound quality.

8. After considering the matter carefully, I am not satisfied that the way in which the judge addressed the difficulties outlined above or the refusal of the adjournment request made by the appellant's representative, can be said to amount to an error of law on the basis that the hearing was procedurally unfair. The judge outlined that because of the difficulties, the appellant's evidence was taken much more slowly and was "not satisfied that those difficulties were such as substantially to compromise the fairness of the hearing or that a fair hearing was not possible."

9. The judge also outlined at some length in 7 or 8 paragraphs reasons why an adjournment of the hearing part-way through the evidence was neither necessary nor appropriate. In particular, the Tribunal had the appellant's witness statement which stood as her evidence in chief and her representative did not seek to adduce further oral evidence from her. The same applied to the evidence of the supporting witness. The judge also pointed out that the respondent's case was substantially that there were deficiencies in the documentary evidence adduced on behalf of the appellant. Any remaining issues were addressed in oral evidence which the judge states there was no difficulty in understanding. The judge also pointed out that no new issue arose during the course of the case in respect of which further oral evidence might have been necessary to address. As submitted in the Rule 24 reply, the grounds of appeal do not challenge any of the judge's detailed reasons for refusing the adjournment application.

10. In the premises, the adjournment application was carefully considered and the refusal cogently reasoned. Nothing in those reasons has been identified as mistaken in fact or law. As Mr Tan pointed out, the grounds failed to challenge the conclusions of the judge that as the appellant arrived in the UK before the sponsor, the appeal was "doomed to failure", or the reasoning set out at [17(e)], [189h)], and [25] of the decision. It follows that regardless of any alleged error relating to the difficulties in communication, the appeal was bound to fail on its merits. In the premises, no error of law is disclosed by the first ground of appeal.

11. In respect of the second ground, whilst this was not pursued before me by Mr West, making no application to reopen permission on this ground, it is nevertheless appropriate to observe that the decision is unduly and unnecessarily lengthy at some 38 pages. In the grounds, the appellant relied on dicta by Henry LJ in Flannery v Halifax Estate Agencies Ltd [2000] 1WLR 377 that the duty of a court or Tribunal to give clear and adequate reasons is a function of due process, and therefore justice and that fairness requires that the parties – especially the losing party – should be left in no doubt why they have won or lost. Lord Phillips MR made a similar point in English v Emery Reimbold & Strick Ltd [2002]

EWCA Civ 605, that a judgement needs to make clear, not only to the parties concerned but also to the appellant court, the judge's reasons for his conclusions.

12. It follows that such long-winded decisions are to be deprecated as they make it more difficult to identify and understand the precise reasons for the findings. It is important for judges to bear in mind that in R (Iran) and others v SSHD [2005] EWCA Civ 982, Lord Justice Brook held that there was no duty on a judge in giving reasons to deal with every argument and that it was sufficient if what was said demonstrated to the parties the basis on which the judge had acted. This approach was adopted and applied by the Upper Tribunal in Budhathoki (Reasons for decision) [2014] UKUT 00341, in which it was stated, "*It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.*"

13. However, the fact that the decision was so long does not of itself amount to an error of law and the grounds entirely failed to identify any specific prejudice to the appellant caused by the length of the decision that can be properly described as an error of law. It is not, for example, asserted that the appellant was unable to find or understand the reasons for the appeal being dismissed. The ground relies on a point of principle and a critique of the judge's drafting style, rather than identification of an error material to the outcome of the appeal. It cannot be said that the decision was either perverse or irrational. It is unsurprising both that permission was refused on this ground and that Mr West did not pursue the matter further.

14. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal so that it must be set aside.

Decision

The appeal of the appellant to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appellant's appeal remains dismissed.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 14 May 2021