IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002483

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 9th July 2023

Before

UPPER TRIBUNAL JUDGE LANE

Between

Simisola Opeyemi Alakija

(NO ANONYMITY ORDER MADE)

Appellant

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: Mr Akindele
For the Respondent: Ms Young, Senior Presenting Officer

Heard at Phoenix House (Bradford) on 19 June 2023

DECISION AND REASONS

1. The appellant is a citizen of Nigeria was born on 15 October 1992. She appeals against a decision of the respondent dated 22 April 2021 to refuse her a family permit. She appealed to the First-tier Tribunal which, in a decision dated 6 February 2022, dismissed her appeal. She now appeals, with permission, to the Upper Tribunal.

2. The appellant claims that the notice of the hearing at Taylor House on 7 January 2022 was never served upon her, United Kingdom sponsor or the solicitors acting for her. No representative or the sponsor attended before the judge, who the proceeded to determine the appeal on the papers.

3. I find that the appeal should be dismissed for the following reasons. First, I note that the appellant seeks to rely on the statements of the solicitor (Mr Akindele) and the United Kingdom sponsor (whom, the papers show, should also have received a copy of the notice of hearing) filed prior to the grant of permission. Mr

Akindele for the appellant told me that no further statements had been filed notwithstanding the directions made by Upper Tribunal Judge Rintoul when granting permission to appeal, as there was 'nothing more say.' The problem with the statements filed by the appellant is that they fail provide any corroborative evidence of the breakdown of the solicitors' email system; one might have expected the statement of the solicitor to have exhibited correspondence with the email provider but there is none. I consider that such evidence was what Upper Tribunal Judge Rintoul had in mind when he granted permission ('The appellant will, however, need to provide a full explanation for why the emails were not received.') given that the statements upon which the appellant now relies were before Upper Tribunal Judge Rintoul. I find that the explanation of the appellant is 'full' but amounts to no more than a bare assertion by her and her solicitor that they did not receive the notices of hearing.

4. Secondly, in her statement, the United Kingdom sponsor says that no notice of hearing had been received at her own email address but she fails to explain why that might be; there is no evidence that her email was, like that of the solicitor, not working nor does she suggest that the wrong email address had been used for service. I consider it unlikely that she did not receive the notice of hearing as now claimed.

5. Thirdly, I note that the notice of hearing was also posted abroad to the appellant's last known address within the timescales prescribed by the First-tier Tribunal Rules. Service on the appellant was, of course, effective service notwithstanding whether the sponsor or solicitor had also been given notice whilst is not clear why the appellant did not contact either the solicitor or the sponsor on receipt of the notice thereby putting them on notice of the hearing.

6. Fourthly, on 13 January 2022, the appellant's solicitor emailed the Tribunal to ask for the appeal to be decided on the papers. That email was sent after the hearing (7 January 2022) but before the judge completed the written decision (6 February 222). I acknowledge that there is no mention of the request to determine the appeal on the papers in the judge's decision but I agree with Ms Young that, at the date the judge determined the appeal on the papers, he was acting exactly in accordance of the appellant's wishes at that time. Even assuming that the solicitor had not received the notice of hearing, it is difficult to see how any error may be material.

7. Fifthly, Mr Akindele's statement [13] submits that, if an email had been sent to 'our disused email [address] it should bounce back and show that it has not been sent as it was not in use.' The suggestion is that the Tribunal must have received the 'bounced back' email but has not disclosed this. I reject that suggestion. There is no such 'bounced back' email in the Tribunal's papers. Had such an email been received, I am confident that I and the parties would have been notified. This further undermines the appellant's argument; the logic of Mr Akindele's argument is that, if the email did not bounce back, then it must follow that it had been received by the intended recipient.

8. In the light of the these observations, I find that the notice of hearing was validly served on the appellant and that the judge did not perpetrate any procedural irregularity or unfairness amounting to an error of law by determining the appeal on the papers. The merits of that decision itself has not been challenged. In the circumstances, the appeal is dismissed.

Notice of Decision

This appeal is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 19 June 2023