



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

APPEAL NO: IA/00667/2014

Heard at Field House on
6 October 2014

Determination promulgated on
28 October 2014

THE IMMIGRATION ACTS

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL DIGNEY

FOLASHADE ELIZABETH OLAYIWOLE (MRS)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the respondent: Ms Isherwood, Home Office Presenting Officer
For the appellant: Mr Emezie

DETERMINATION AND REASONS

1. On 27 November 2012 the appellant and her three children, citizens of Nigeria, applied for leave to remain in this country outside the rules and the application was refused. It is clear that the respondent treated this as an application on behalf of the mother and her three children. The Reasons for Refusal Letter states this in terms¹, and the letter refers, in the first paragraph, to “your clients’ (sic) application for further leave to remain” and the four names appear at the top of the letter, though there are places in the letter where the client becomes singular.

¹ See paragraph 2 on page 2.

2. The three children all had extant leave at the time of the application so it follows that they all had a right of appeal. An appeal, on behalf of the appellant and her three children was lodged. The form refers to the appellant "+3", which, bearing in mind the lack of space in the form is understandable, but the typed grounds of appeal name all three children in full, as well as their mother. The first paragraph states that "the appellants consist of a mother and three dependent children. Subsequently the mother is referred to the "appellant" but it is clear that all four are appealing.
3. The Home Office trial bundle has on the face of it "Folashade Elizabeth Olayiwole....+3" and the third page of the bundle shows all the children as appellants.
4. When the case appeared before the First-tier Tribunal only the mother was listed as an appellant on the Record of Proceedings and hers is the only name that appears on the various documents sent out to the parties.
5. No-one appears to have pointed out this fundamental error to the judge.² The situation of one of the children was considered as he had serious health problems and it was the judge's treatment of these problems that caused Upper Tribunal Judge Freeman to grant permission to appeal, the First-tier judge having dismissed the appeal.
6. To call what happened here an administrative irregularity is an understatement. The appeals of three appellant were not listed or heard. In those circumstances the only course is to set aside the decision by allowing the appeal and remitting the matter to the First-tier Tribunal for the appeals of all the appellants to be heard together. The three children are all appellants and all that needs to be done is for them to be listed as separate appellants. I do not see any need for separate files to be prepared for each of them, but that is an administrative matter.
7. It follows that the original determination did contain an error of law in that the judge did not deal with the appeals of three appellants together with the appeal of the appellant that he did deal with.

The appeal is accordingly allowed

For the reasons given the appeal is allowed and the matter remitted to Hatton Cross Hearing Centre where it will be heard *de novo* by any judge other than Judge Prior or myself.

Designated Judge Digney
Judge of the Upper Tribunal

7 October 2014

² Indeed, at the hearing before me, Mr Emezio only mentioned the matter, in passing after the merits had been fully argued.