



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00973/2014**

THE IMMIGRATION ACTS

**Heard at Manchester
On 16 September 2015**

**Determination Promulgated
On 13 October 2015**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**AG
ANONYMITY DIRECTION MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Osadebe, Zuniel solicitors
For the SSHD: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. I make an anonymity order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) because the appeal includes an asylum claim. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.
2. In a decision dated 23 June 2015 First-tier Tribunal Judge Page

dismissed the appellant's appeal against a decision dated 9 May 2014 to make a deportation order against him. The Judge determined the appeal in the appellant's absence on 18 June 2015 at Columbus House, Newport. The grounds of appeal submit that the Judge acted unfairly in doing so. Permission to appeal was granted on this basis.

3. Judge Page set out what happened on the day of the hearing in her decision [10-14]. On the morning of the hearing the appellant's solicitors, Zuriel Solicitors sent a fax at 10.12am informing the Tribunal that the appellant had gone to a hearing centre in London by mistake and requested an adjournment. The fax goes on to state:

"Our client is unable to return to Newport today for his appeal hearing and as such we humbly request for a short adjournment to conclude our client's matter."

4. The application for the adjournment was opposed by the SSHD's representative. Judge Page was not satisfied that she had been given proper reasons for the appellant and his solicitors not attending the hearing and refused the adjournment request.
5. I must decide whether the Tribunal acted unfairly in all the circumstances, not simply whether it acted reasonably - see Nwaigwe (adjournment: fairness) [2014] UKUT 418 (IAC).
6. The grounds of appeal prepared by Zuniel Solicitors are unimpressive: the appellant's nationality is wrongly stated to be Nigerian when he is a national of Ethiopia; the document contains numerous grammatical and spelling mistakes and is written in poor English; a witness statement from the appellant and / or the solicitor to explain what happened on the day of the hearing is not attached; submissions wrongly contend that the Judge did not consider the appellant's human rights.
7. At the beginning of the hearing I asked Mr Osadebe if he had any evidence to support what happened on the day of the hearing but he was unable to provide me with any. Mr Osadebe accepted that he was aware that the First-tier Tribunal hearing was listed to take place in Newport. When I asked him why he did not attend he gave a conflicting answer. He first said he had applied for an adjournment of the hearing. He was unable to provide me with a copy of this request or any response to it. I could not see a request on the Tribunal file. In any event he accepted the adjournment was not granted but still could not explain why he did not attend. He then explained that the 'brief was not perfected' and there were funding problems. I asked him if in these circumstances he formally informed the Tribunal he was no longer acting but he was unable to explain why he took no action, and continued to appear to represent the appellant.
8. Mr Osadebe then told me that he had rung the Tribunal to say that the appellant was on his way from London to Newport. At this point

the appellant intervened and said that it was he who rang the Tribunal and not his solicitor. I then heard from the appellant who explained that he went to the London hearing centre because that is where his previous hearing had taken place. When he discovered the hearing was in Newport he called Zuriel Solicitors and then the Newport hearing centre to tell them he was on his way. He arrived at 2.30pm but was told that the hearing had been completed without him.

9. Mr Harrison invited me to find that this is a case in which there had been unfairness as the appellant had done all that he could to get to his hearing after discovering a genuine mistake. Mr Harrison was correct to concede matters as he did. This appellant did his best to attend the hearing. He was not assisted by solicitors who continued to act for him. The appellant's appeal raises matters of fundamental importance to him. In all the circumstances I am satisfied that there was unfairness. Had the solicitors clearly communicated the appellant's willingness to attend Newport that day matters may have turned out differently.
10. I also accept Mr Harrison's submission that the decision needs to be remade completely and that given the nature and extent of those findings, this needs to be done in the First-tier Tribunal. I have had regard to para 7.2 of the *Senior President's Practice Statements* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the First-tier Tribunal.
11. I have serious concerns about the way in which the appellant's solicitors have acted during the course of these proceedings. I have therefore directed Mr Osadebe to address these concerns by providing the Tribunal and the appellant with an explanation in relation to each of the matters set out below.
 - (a) The solicitors remained on record as acting for the appellant when it is clear that they had no intention of attending the hearing. Notwithstanding this no effort was made to inform the Tribunal that they would not be attending. In these circumstances the Judge was entitled to view with some suspicion the fax from the solicitors. This fax was sent from a London fax number. No effort was made to explain why the solicitors could not attend the hearing in Newport.
 - (b) The solicitors did not clearly ascertain or communicate the appellant's intention to travel to Newport that day to the Tribunal. Instead the solicitors indicated that the appellant would not be able to attend that day.
 - (c) The solicitors sought to rely upon grounds of appeal without any evidence to support the circumstances surrounding the appellant's claim that he made his way to Newport that day albeit late in the day.

- (d) Mr Osadebe provided me with an unclear and inconsistent explanation for why he did not attend Newport on the day of the hearing. His claim to have asked for an adjournment was entirely unsupported. His account of what happened that day appears not to have been contemporaneously recorded anywhere.

Decision

12. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.
13. The appeal shall be remade by First-tier Tribunal de novo.

Directions

- (1) The appeal shall be reheard *de novo* by the First-tier Tribunal sitting in Manchester (TE: 2.5hrs) on the first date available.
- (2) Mr Osadebe shall provide the Tribunal and the appellant with his position in relation to the concerns set out at paragraph 11 above within 14 days of the date of service of this decision.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
6 October 2015