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

Appeal Numbers: IA/12038/2014
IA/12047/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 October 2015**

**Decision Promulgated
On 21 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROMM

Between

**ADESOJI JOSEPH ADEBAMBO
TAIWO ELIZABETH ADEBAMBO
(NO ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Iqbal, Counsel

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Nigeria born on 16 May 1975 and 3 April 1977 respectively. The second appellant is the partner of the first appellant and appeals as his dependant. The first appellant had leave as a Tier 4 (General) Student until 21 January 2014. An application was

submitted for further leave as a Tier 4 Student and his dependant. However, the application was refused on 18 February 2014 by reference to the Maintenance rules. The first appellant did not have an 'established presence', as defined by paragraph 1C of Appendix C of the Immigration Rules, and in consequence did not have sufficient funds in his account for the requisite 28-day period. The reason he did not have an 'established presence' was that he had made his application on 28 January 2014, which was after his leave had expired. It followed that the appellants had no right of appeal against the decisions.

2. The appellants lodged notices of appeal, arguing they had a right of appeal because the application was submitted on 21 January 2014, which was in-time. The appellants request their appeals be decided on the papers.
3. The appeal was heard by Judge of the First-tier Tribunal N Manuel on 19 July 2014. She noted the appellants had not responded by providing evidence to support the claim that the application was made prior to 28 January 2014. She dismissed the appeals for want of jurisdiction.
4. The grounds seeking permission to appeal argued the judge erred in her assessment because she had overlooked the fact the application was made on-line and the fee had been paid on 20 January 2014. The application was made in-time.
5. Permission to appeal was refused by Judge of the First-tier Tribunal Chohan, who considered that it was apparent from the application form that it was completed on 20 January 2014 and a fee was charged on the same day. However, there was no evidence to establish the form was actually submitted on 20 January 2014.
6. The application was renewed to the Upper Tribunal. The grounds asserted that the fee could only be paid once an application had been submitted online. However, the application was again refused. Upper Tribunal Judge Freeman considered it was quite clear from the respondent's letter of 12 March 2014 that it was a 'print and post' application, where a form is downloaded, completed and posted. The letter of 12 March 2014 was a response to the pre-action protocol letter sent by the appellants' solicitors following the decisions to refuse leave.
7. The appellants then obtained an Order from the Administrative Court quashing the Upper Tribunal's decision. Permission to appeal was formally granted by Mr C. M. G. Ockelton, Vice President of the Upper Tribunal, on 21 May 2015. Unfortunately, the Administrative Court's reasons for granting permission to bring judicial review have not been provided. A copy of the grounds was contained in the papers and I made them available to the representatives.
8. The respondent filed a rule 24 response opposing the appeal.

9. The representatives made submissions on the issue of whether Judge Manuel's decision contained a material error of law. I have recorded these in full in the record of proceedings and taken them into account. Discussion focused on the mechanics of making an application and paying the fee. Unfortunately, neither representative could offer definitive evidence regarding the precise process.

Error of law

10. I find Judge Manuel's decision does not contain a material error of law such that it must be set aside. The judge was faced with the task of deciding whether the appellants' factual assertion that the application was made online on 20 January 2014 was correct or whether, as the respondent maintained, the form was simply downloaded and completed on 20 January and subsequently posted. She had to do this "on the papers" and therefore without the benefit of hearing evidence and receiving submissions. She had the benefit of the skeleton argument submitted with the appellant's bundle and copies of the decision and application form. She considered these documents and made a rational assessment of them. She dealt with the argument set out in the skeleton argument and it was not argued that her assessment on that point was faulty. She considered the remark of the Duty Judge that there was "some evidence" the application was in-time but it was clear that no final decision had been made and the Duty Judge had suggested the parties deal with it by way of preliminary issue. That is what Judge Manuel did. She noted the appellants had been made aware of the respondent's position, that the form was posted on 28 January 2014, and she noted the appellants had not disputed this. I find she was entitled to reach the conclusion that the applications were submitted by post and were therefore out of time.
11. Much of the discussion at the hearing concerned materials which were not before the judge. If the appellants succeeded in showing the application was in-time, they would also succeed in their substantive appeals. I was prepared to consider whether reaching a just outcome demanded a more flexible approach to the question of error of law. However, consideration of the new materials did not alter the position.
12. Ms Iqbal provided the appellants' bank statement showing the fee was paid on 20 January 2014. This accorded with the information regarding payment by "credit card" on page 1 of the form. However, she could not establish that the renewed grounds of appeal were correct in asserting that a fee could only be paid if an application were submitted on-line at the same time. It remained a distinct possibility that a fee could be paid and a form downloaded without the form being submitted online in the same transaction. Whilst the rules provide for online applications in paragraph 34G, such that the date of application would be the date the form was submitted online, I do not find this happened in this instance. Mr Tarlow pointed out the rubric on page 2 of the form stated, "*You need to submit this to us by post in order to make your application.*" In

other words, this was not a category in which an online application was acceptable. Such a conclusion would chime with the fact the online form had been signed and dated in manuscript by the first appellant on pages 15 and 16 and also the Home Office letter of 12 March 2014, which stated that the appellants signed the application on 20 January and then posted it recorded delivery on 28 January. It was received on 29 January 2014. The date of application was therefore 28 January 2014 in line with paragraph 34G(i) of the rules.

13. The balance of the evidence therefore supports the view that the appellants downloaded a form when they paid the fee on 20 January 2014, then printed it off and posted it on 28 January 2014 in accordance with the guidance on the form. Unfortunately for them, it was sent too late and was out of time, leave having expired on 21 January 2014.

NOTICE OF DECISION

The First-tier Tribunal's decision, dismissing the appeals for want of jurisdiction, did not contain a material error of law and shall stand.

Signed

Date 15 October 2015

**Judge Froom,
sitting as a Deputy Judge of the Upper
Tribunal**