



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

Appeal Number: IA/38459/2014

THE IMMIGRATION ACTS

Heard at Field House

**On 9 March 2016
Extempore**

**Decision & Reasons
Promulgated
On 7 June 2016**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**OLUWATOBI DANILARE ONENEYE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Duffy, Home Office Presenting Officer
For the Respondent: no appearance

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision public funds First-tier Tribunal Judge Shamash promulgated on 10 September 2015 in which she allowed the appeal of Mr Oluwatobi Danilare Oneneye

(to whom I refer as the claimant) against the decision of the Secretary of State to refuse him leave to remain in the United Kingdom.

2. I am satisfied from the court file that, Mr Oluwatobi Oneneye, has been given proper notice of the time, date and venue of the hearing for that was also served on his representatives, Galaxy Law Office, who have not, it appears from the file, said that they are no longer acting for the appellant. No explanation has been given by the claimant to explain his failure to attend the hearing today and I am satisfied that in all the circumstances of this case I should proceed to determine the appeal and in doing so I note that the claimant has not, although he was entitled to do so, served a notice pursuant to Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
3. The Secretary of State's case is that, at the hearing, the judge had said that the refusal letter was deficient in that it did not address Article 8 of the Human Rights Convention; that the appropriate course of action was to remit the matter to the Secretary of State; and, accordingly with the agreement of the Presenting Officer, she would allow the appeal to that limited extent.
4. The challenge is that contrary to that, the judge went on to consider the merits of the appeal and that accordingly a procedural unfairness arose whereby the Secretary of State was unable to make proper representations to the judge against the appellant's case that he should be granted leave to remain in the United Kingdom.
5. The grounds were supplemented by a brief note from the Presenting Officer, Miss Deshraj, who had appeared before First-tier Tribunal Judge Shamash.
6. On 12 January 2016 First-tier Tribunal Judge P J M Hollingworth granted permission.
7. As noted earlier, there is no appearance by the claimant and no response to the grant of permission. Mr Duffy submitted that it was clear on the basis of the report that the judge had apparently misunderstood what had been agreed and had, contrary to what the Secretary of State understood to be the case, considered the appeal in detail.
8. There is, as Mr Duffy submitted, no evidence contrary to Miss Deshraj's brief report. It is unclear from the judge's notes of evidence as to what occurred and I do note that case it was a floating case heard on 15 July 2015, that the decision was prepared on 10 August and was not promulgated until four months later. It would appear in the circumstances that the judge may have forgotten what was said at the hearing and that accordingly she went on to determine the appeal substantively, contrary to what she had said in court.

9. It follows from this that the Secretary of State was not given a proper opportunity to put her case on the substantive merits of the appeal and that accordingly a procedural error capable of giving rise to an error of law occurred. For these reasons I am satisfied that the decision of the First-tier Tribunal did involve the making of an error of law and I set it aside.
10. I consider that in the circumstances the appropriate course of action where there has been a procedural failure whereby there was therefore no fair hearing that the matter should be remitted to the First-tier Tribunal for a fresh determination on all issues.

SUMMARY OF CONCLUSIONS

- 1 The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- 2 The appeal is remitted to the First-tier Tribunal for a fresh decision on all issues; none of the findings made previously are preserved.
- 3 No anonymity direction is made.

Signed

Date: 16 March 2016



Upper Tribunal Judge Rintoul