



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/01552/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at the Royal Courts of  
Justice  
On 5 June 2017**

**Decision & Reasons  
Promulgated  
On 6 June 2017**

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**EMMANUEL OGUNLEYE OGUNRINDE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Mr Mathias Ume-Ezeoke, Counsel  
For the respondent: Mr Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of Judge of the First-tier Tribunal Widdup (Ftj), promulgated on 04 October 2016, dismissing the appellant's appeal against the respondent's decision of 22 June 2015 refusing his human rights claim.

**Factual Background**

2. The appellant is a national of the USA, date of birth 28 February 1955, although he was born in Nigeria. He entered the United Kingdom as a visitor in October 2005 but overstayed. An unsuccessful application for

leave to remain as a dependent spouse was made in 2008. On 5 May 2015 he applied for leave to remain as the parent of his 3 daughters all of whom are resident in the United Kingdom and living with their mother. It was unclear to the respondent whether the appellant was still in a relationship with the mother of his daughters and she proceeded, in the absence of any evidence of a relationship, to consider the application based on the parent route under Appendix FM.

3. The respondent concluded that the appellant failed to meet the requirements of R-LTRP.1.1(d)(ii), with reference to E-LTRP.2.2-2.4 and E-LTRP.3.1, and that he failed to meet the requirements of paragraph 276ADE.
4. The appellant submitted a valid application to appeal this decision to the First-tier Tribunal. He requested an oral hearing and paid the appropriate fee. On 22 March 2016 he was issued with a Notice of Hearing indicating that his appeal would be heard on 16 September 2016 at Hatton Cross. In anticipation of this hearing the appellant, who was not legally represented, filed, on 19 April 2016, a bundle of documents including a skeleton argument, a witness statement from himself, copies of his children's passports and residence cards, and letters in support of his application from his partner (as described in her statement, although she and the appellant did not live together due to "circumstances beyond our control") and his 3 daughters.

### **The decision of the First-tier Tribunal**

5. It appears from the determination, and was not disputed by the respondent, that the appellant's appeal was listed on a float list. This means that his case was not assigned to a particular judge and would be heard as and when a court became available. When the appeal came to be heard the respondent was not represented by a presenting officer. The Ftj satisfied himself that the appellant was made aware of the listing because his (former) partner's witness statement referred to the hearing date. At paragraph 9 the Ftj stated that the appellant did not attend the hearing centre and that no explanation was provided for his absence. Pursuant to rule 28 of the Tribunal Procedure (First-tier Tribunal) (Immigration & Asylum Chamber) Rules 2014 the Ftj satisfied himself that it was in the interests of justice to proceed with the hearing even in the appellant's absence.
6. The Ftj proceeded to consider the limited documentary evidence provided by the appellant. He noted (for example, at paragraphs 15, 16, 24 & 29) that, had the appellant attended the hearing, his evidence could have been tested and more weight could have been attached to the statements provided, and that the Ftj would have had an opportunity to learn more about the families' immigration history, the appellant's relationships with his family, and further details of the nature of his private life. The Ftj was not satisfied that the appellant met the requirements of the immigration rules relating to his

relationship with his children and his private life relationships. Nor was the judge satisfied, taking into account the public interest factors identified in section 117B of the Nationality, Immigration and Asylum Act 2002, that his removal would constitute a disproportionate impact on his relationship with his children. The judge dismissed the appeal.

### **The grounds of appeal**

7. In his grounds the appellant maintains that he was in fact present at the First-tier Tribunal on 16 September 2016. He had booked in at reception, was informed that his case was on the float list, and that he remained at the court until 3:50 p.m. when the court clerk informed that all floaters were going to be listed on a different day. The essence of the grounds, which appear to have been drafted by the appellant himself, was that he was deprived of a fair hearing through the absence of any opportunity to give oral evidence.
8. Permission to appeal was granted by Judge of the First-tier Tribunal Frankish who stated that, if the appellant could demonstrate that he was treated as absent when he was present, it was arguable that a procedural error amounting to an error of law occurred.

### **Submissions at the error of law hearing**

9. At the outset of the hearing the appellant's legal representative produced a letter from Tariq Tarapdar, Court Clerks Manager at IAC Hatton Cross, signed by him and a Mitie Security Officer at Hatton Cross, and dated 1 June 2017. This letter read as follows:

Mr Ogunrinde came to Hatton Cross 31/05/17 and spoke to me directly. He informed me that he had a hearing at Hatton Cross 16/09/16 and was on float list. He also explained that the case was heard in absence and he was under the impression that the case was to be adjourned.

Mr Ogunrinde has asked me to help and to provide any possible evidence that he attended Hatton Cross on 16/09/17 [this should read '16/09/16']. Unfortunately I could not find any evidence and according to our records the case was marked as "no-show".

However after speaking to a member of a security team [the security officer's name and ID provided] he clearly remembered Mr Ogunrinde being on site and also remembers speaking to Mr Ogunrinde's children.

10. Having considered this letter, and having regard to the emphasis placed by the FtJ on his inability to further explore or test the appellant's evidence, Mr Melvin accepted that he was in a difficult position and made no further submissions. I indicated that I did not need to hear from the appellant's representative. I gave brief oral reasons for allowing the appeal and indicated that the matter would be remitted to the first-tier Tribunal for a full de novo hearing.

### **Discussion**

11. I am satisfied that the appellant was present at Hatton Cross on 16 September 2016 and that, through an administrative error, he was marked as being absent. The letter from the Courts Clerk Manager, signed by the Security Officer, which was not challenged by Mr Melvin, strongly indicates that the appellant was on site on 16 September 2016. Furthermore, the appellant's description in his grounds of appeal of the procedure governing float cases at Hatton Cross is consistent with my own experience, having sat at Hatton Cross for several years. I am satisfied, through a combination of the HM Courts & Tribunals Service letter and the description of floats given by the appellant in his grounds, that he was wrongly marked as a "no-show".
12. The FtJ heard the appeal in the appellant's absence. This is no criticism of the judge. He acted entirely appropriately in relying on information given to him by his court clerk and proceeded, giving valid reasons, to determine the appeal. However, the fact remains that the appellant was deprived of an opportunity of giving oral evidence in his appeal. As the FtJ properly pointed out, there was no opportunity for him to explore the appellant's relationship with his children, his relationship with his (former) partner, and the private life relationships established by him. Through no fault of the FtJ the appellant has not had a fair opportunity to present his case and this renders the First-tier Tribunal decision unsafe. In these circumstances it is appropriate to remit the matter back to the First-tier Tribunal for a fresh assessment of his appeal, before a judge other than Judge Widdup.

### **Notice of Decision**

**The First-tier Tribunal's decision is vitiated by a material error of law**

**The matter is remitted to the First-tier Tribunal for a fresh hearing before a judge other than judge of the First-tier Tribunal Widdup**

I make no anonymity direction.



05 June 2017

Signed

Date

Upper Tribunal Judge Blum