



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
HU/22912/2016

Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Stoke**

**Decision and  
Promulgated**

**Reasons**

**On 2 November 2017**

**On 10 November 2017**

**Before**

**UPPER TRIBUNAL JUDGE PLIMMER**

**Between**

**PAUL ADLAM  
(Anonymity Direction Not Made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Mr Markus, Counsel

For the respondent: Mr McVeety, Senior Home Office Presenting  
Officer

**DECISION**

1. In a decision dated 27 May 2016 the respondent maintained a decision to deport the appellant, a citizen of Jamaica, and certified his human rights claim pursuant to section 94B of the Nationality, Immigration and Asylum Act 2002. The decision to deport was based upon the appellant's criminal offending, having been sentenced to a total of two years imprisonment on 10 December 2015. The appellant relied upon his family life with his British citizen partner and his British citizen daughter born in 2014. The appellant was deported to Jamaica on 7

September 2016, but was provided with an 'out of country' appeal.

2. First-tier Tribunal Juss refused the appellant's application for an adjournment at a hearing on 9 February 2017, at which the appellant did not appear and was not represented, and dismissed his appeal on human rights grounds in a decision dated 14 February 2017. In a decision dated 22 June 2017 the First-tier Tribunal granted the appellant permission to appeal, observing that there was procedural unfairness in the failure to grant the adjournment.

### **Hearing**

3. At the beginning of the hearing before me Mr McVeety immediately conceded that the failure to adjourn the hearing was unfair and an error of law such that the appeal should be remitted to the First-tier Tribunal to remake the decision.
4. I had regard to para 7.2 of the relevant *Senior President's Practice Statement*, the procedural unfairness identified in the First-tier Tribunal decision, and the nature and extent of the factual findings required in remaking the decision, and I agreed with both representatives that this is an appropriate case to remit to the First-tier Tribunal.

### **Error of law discussion**

5. I am satisfied that the First-tier Tribunal acted unfairly in refusing to adjourn the hearing in light of the principles set out in Nwaigwe (adjournment: fairness) [2014] UKUT 00418. Mr McVeety quite properly conceded that fairness required an adjournment and I can therefore give my reasons briefly. When the matters set out below are considered together fairness clearly demanded an adjournment.
  - (i) The appellant made it clear at a relatively early stage that he was in the process of obtaining legal funding in order to secure legal representation to assist him to prepare for the appeal. Given the nature of the appeal and the fact that the appellant was outside the jurisdiction, legal representation was difficult to obtain but played an important role in ensuring that his appeal was effective - see the observations of Lord in Kiarie and R (Byndloss) v SSHD [2017] 1 WLR 2380 at

[74].

- (ii) Funding was only granted funding on 8 February 2017, the day before the hearing.
  - (iii) As explained in the grounds of appeal the appellant satisfied a high threshold to be successful in securing exceptional case funding.
  - (iv) The evidence available to the First-tier Tribunal was incomplete, and there was no video link or other facility to enable the appellant to appear.
6. In addition, the First-tier Tribunal erred in law in considering the adjournment request “*superfluous*” on the basis that the appellant had already been deported [11]. This is difficult to follow. The appellant was clearly entitled to a fair hearing whether his appeal was brought in or out of country.
7. The First-tier Tribunal also failed to take into account two relevant factors when making the decision not to adjourn: (i) the extent to which the absence of legal representation, combined with the appellant being outside of the jurisdiction disadvantaged him in being able to address the matters raised within the decision letter; (ii) the potential prospects of success if the appeal was properly prepared, in light of the grant of Exceptional Case Funding.

### **Decision**

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

### **Directions**

- (1) The appeal shall be reheard de novo by the First-tier Tribunal sitting in Manchester, Nottingham, Birmingham or Stoke (TE: 2.5hrs).
- (2) There shall be a case management hearing listed before the First-tier Tribunal, after a period of two months, to address the appropriate arrangements to ensure that the substantive hearing is effective in light of the observations in Kiarie (supra).

Signed:  
Ms M. Plimmer  
Judge of the Upper Tribunal

Date:  
2 November 2017