



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

Appeal Number: IA/00009/2014

THE IMMIGRATION ACTS

Heard at Liverpool

On 5th December 2017

**Decision & Reasons
Promulgated**

On 8th January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**MR BASHIR OLAITAN ADEBAYO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Riaz, Manchester Legal Services

For the Respondent: Mr C Bates, Senior Presenting Officer

DECISION AND REASONS

1. This is an appeal by Mr Bashir Olaitan Adebayo against the decision of Judge Lever, promulgated on the 28th February 2017, to dismiss the appeal against refusal of his application for leave to remain in the United Kingdom on private and family life grounds.
2. At the oral hearing of the appeal, which took place on the 17th January 2017, Judge Lever had indicated that he would allow the appeal. He did so after hearing brief submissions from the Home Office Presenting Officer. He thereafter indicated that it was unnecessary to hear submissions from

the representative of the appellant because he had decided to allow the appeal. However, as the judge candidly admits at paragraph 11 of his decision, he subsequently realised that he had overlooked a material factor that might cause him to change his mind. Entirely properly, therefore, he wrote to the representatives of both parties, acknowledging his error, and inviting them to make written submissions within a period of 10 days. The judge acknowledged receipt of the respondent's submissions at paragraph 12 of his decision. He thereafter continued –

“I have not received submissions on behalf of the Appellant. Sufficient time has now been allowed for those submissions to be made and I now provide a decision in writing in this case.”

3. In fact, Ms Riaz had sent her further submissions by facsimile message at 14:38 on the 31st January 2017 as is confirmed by the receipt that is attached to the grounds of appeal. The failure to place them before Judge Lever must therefore be ascribed to an administrative error. It would thus have been preferable for the current application for permission to appeal to have been placed before the Resident Judge at Manchester for consideration of the setting aside of the decision under Rule 32 of the Tribunal Procedure Rules 2014. As it is, the matter is now before me in the Upper Tribunal and it is no longer possible to adopt that procedure.
4. The main ground of appeal is based upon the procedural unfairness of determining this appeal without the appellant's representative being given an opportunity to be heard. This ground must obviously succeed given that not only was Judge Lever apparently unaware of Ms Riaz's written submissions but also the fact that he had not heard oral submissions from her at the original hearing of the appeal on the 28th February 2017. The remaining grounds of appeal essentially contain the arguments that were set out in the written submissions that Judge Lever did not consider. It would be inappropriate for me to comment upon the merit of those arguments given that fairness requires that they are in the first instance adjudicated upon by the First-tier Tribunal
5. I therefore set aside the decision of the First-tier Tribunal and remit the appeal to be heard again in the First-tier Tribunal, preferably by Judge Lever if he is available. All Judge Lever's findings of fact are preserved.

Notice of Decision

6. The decision to dismiss the appeal is set aside for error of law (procedural unfairness) and is remitted to be reheard by any judge of the First-tier Tribunal, including Judge Lever if he is available.

Listing directions

7. All the findings of fact of the First-tier Tribunal are preserved. The time estimate and format of the rehearing (oral or written submissions) is to be decided by the Resident Judge at Manchester.

No anonymity direction is made.

Judge Kelly

Date: 5th January 2018

Deputy Judge of the Upper Tribunal