



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/47978/2013**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 19 August 2014**

**Determination
Promulgated
On 20 August 2014**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
and Appellant

Mr OLADAPO STEPHEN FAKEYE
Respondent

Representation:

For the Appellant: Mr S Karim, Counsel
(instructed by Fitzpatrick & Co)

For the Respondent: Mr S Walker, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Respondent's appeal against the decision dated 30 October 2013 to refuse to issue him with a EEA permanent residence card was allowed by First-tier Tribunal Lingam in a determination promulgated on 5 June 2014. The judge had ruled that a previous notice of

revocation in 2007 had not complied with the notice regulations. Permission to appeal had been granted to the Secretary of State, rightly in the Upper Tribunal's view, because the determination was inadequately reasoned.

2. Following informal discussion, it was agreed by both parties that the determination was unsustainable because of its inadequate reasoning. It was noted that the Secretary of State had not been represented at the First-tier Tribunal hearing.
3. The tribunal finds that the determination cannot stand and it is set aside by consent. It was not correct to state (see [23] of the determination) that the 2007 notice had resulted in the present appeal. The judge conflated the previous decision notice with decision notice before the First-tier Tribunal, which was plainly in the correct form and required a decision. The judge should have determined all issues, but failed to do so.
4. This led to a rehearing in the Upper Tribunal. There was a clear issue as to service of the notice of revocation in 2007 on the original Appellant which could not be decided today on the evidence available to the Secretary of State. There were also other issues which the original Appellant wished to raise about events since 2007. The Upper Tribunal was unwilling to adjourn the appeal or to remit it to the First-tier Tribunal, because either route would have been a recipe for delay and had potential to create procedural confusion.
5. In view of the clear inadequacy of the Secretary of State's decision dated 30 October 2013, which failed to address the prior revocation issue, Mr Walker applied for permission to withdraw the original decision.
6. Withdrawal of pending appeals is only possible in the Upper Tribunal with judicial approval. The reasons which Mr Walker gave were sufficient and the Upper Tribunal approves such withdrawal. Clarity is in the Appellant's interest. The result of the permitted withdrawal means that the Secretary of State has yet to determine the original Appellant's application.

DECISION

The determination promulgated on 5 June 2014 is set aside for material error of law

The original appeal was withdrawn by the Secretary of State

Decision by the Secretary of State on original EEA application yet to be made

Signed

Dated

**Deputy Upper Tribunal Judge Manuell
Judge of the Upper Tribunal**

TO THE RESPONDENT
FEE AWARD

The appeal was withdrawn. Therefore there can be no fee award

Signed

Dated

**Designated Judge Manuell
Judge of the First-tier Tribunal**