



IAC-BH-PMP-V1

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

Appeal Number: IA/02970/2015

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 17th August 2015**

**Decision & Reasons Promulgated
On 11th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

**OLUSEGUN KOLAWOLE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. On 6th July 2015 Designated Judge of the First-tier Tribunal Shaerf gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal North in which he dismissed the appeal against the decision of the respondent to refuse leave to remain in accordance with the provisions of Appendix FM and paragraph 276ADE of the Immigration Rules.
2. Judge Shaerf noted that the grounds of application challenged the judge's findings about his relationship to claimed family members including his Irish daughter and

partner Mariam Itua. Designated Judge Shaerf thought it arguable that the appellant had not been given the opportunity to explain, if he could, apparent discrepancies in the evidence upon which the judge relied in reaching his conclusions. Further he thought that the judge had made no material mention of his reasons for refusing an adjournment decision.

3. At the hearing before me the appellant was unrepresented. In these circumstances I explained the nature of the hearing, particularly the need to identify an error on a point of law in the judge's decision. I assisted the appellant to make submissions by asking him questions based upon his grounds of application which take the form of a letter dated 15th May 2015.
4. The appellant said that he thought the judge should have adjourned the hearing as he was "really ill and couldn't speak". He also claimed that he thought the judge had already decided his case and ignored the documents submitted. He also produced a letter from a doctor dated 8th May 2015 which postdates the hearing. This letter, signed by a Dr P Burns, sets out the appellant's past medical history and his present conditions namely: stage 3 kidney disease, sciatica and benign prostatic problems. It lists the medication prescribed. The letter does not give any indication of the state of health of the appellant at the time of the hearing before the First-tier Tribunal on 15th April 2015.
5. There are also other documents in the form of correspondence to which my attention was drawn and which have a label attached indicating that they are proof of the relationship between the appellant and his partner and her son since 2013. The appellant emphasised that it was his illness on the day of the hearing which meant that he did not have any extra documents with him. He identified these documents as his daughter's identity and tax and trading documents would have shown that her partner was supporting him. I indicated to the appellant that some of the documents now produced post-dated the hearing and so could not have been available to the judge when making his decision.
6. The appellant then accused the judge of not allowing him to speak at the hearing at all, at which point I indicated to him that the judge had evidently spoken to him at the hearing about the adjournment and the documents which he had produced and others he intended to produce. I referred the appellant to paragraph 7 of the decision where this is recorded. The appellant made no further relevant comment but proceeded to repeat his main claims in relation to the application.
7. I asked Mr McVeety to address me. He made reference to the Presenting Officer's notes which contain six pages of recorded cross-examination of the appellant and an indication that the judge allowed the appellant to obtain more documents if he could by granting a short adjournment and allowing him to submit additional documents which the judge then refers to in detail in paragraph 7 of the decision. He thought that the identity card for the appellant's daughter was irrelevant to the application. He also commented that the reason for the adjournment related to documentation and not the appellant's state of health. He submitted that the judge had dealt with the relevant provisions of Appendix FM and paragraph 276ADE before reaching the conclusion that the Rules could not assist the appellant. He emphasised that the application could only have succeeded outside the Rules and the judge was entitled to dismiss the appeal.

8. In conclusion the appellant said that he thought the judge did not believe his partner. He again emphasised his illnesses which meant that he was unable to cope at the time of the hearing. He then repeated his claim that he would be unable to survive if returned to Nigeria. He also said he had a relationship with his partner's child which the judge had not considered. He concluded by saying that the judge had not considered the documents he submitted after the hearing.

Conclusion and reasons

9. At the end of the hearing and after I had considered the matter for a few moments, I announced that I was not satisfied that the decision showed an error on a point of law and now give my reasons for that conclusion.
10. The grounds of application criticise the judge for not giving the appellant a fair hearing and allege that he did not give consideration to documents produced both at and after the hearing. It is also implied that the judge reached the wrong decision in relation to the appellant's relationship with his partner and her child. The grounds of application make no mention of ill-health as a reason for adjourning the hearing as opposed to the need to submit further documents.
11. The decision is comprehensive and cogently reasoned. It makes clear reference to the appellant's request for an adjournment at the commencement of the hearing. As confirmation that the issue was before the judge I note that there is also reference to the adjournment application in the judge's record of the proceedings. I accept that the presenting officer's notes also confirm this. The judge considered the application on the basis that the appellant wanted more time to respond to arguments put in the respondent's refusal which the appellant thought had nothing to do with his claim. The issue of illness was not raised in this respect. The judge was not wrong to refuse the adjournment on the basis that the appellant had ample time to prepare for the hearing. Nevertheless, the judge fairly put back the hearing in response to the appellant's claim that his partner was bringing additional documents to the hearing centre which were relevant to his appeal. After hearing reasons for the appellant's partner not remaining at the hearing centre after she had transported the appellant there earlier in the morning, the judge reached the conclusion, open to him, that the appellant was fabricating his reasons to request an adjournment.
12. Additionally, in paragraph 7 of the decision, the judge records that he did give the appellant the opportunity to present further documents after the hearing had been concluded and that these would be taken into consideration. The judge evidently considered the documents which were subsequently provided because he identifies and comments upon them in the decision. He was entitled to conclude that none of the documentation assisted him to find that the appellant was living with his partner at any time. He was entitled to reject the human rights claim on the basis that the appellant had not shown that he had established any private or family life.
13. It is also plain that the judge gave proper and detailed consideration to the application of the Immigration Rules in Appendix FM (including section EX) and paragraph 276ADE of the Immigration Rules and properly concluded that the provisions could not benefit the appellant.

14. The judge also considers the appellant's medical condition before reaching his overall conclusions as paragraph 13 of the decision shows.
15. I am unable to conclude that the comprehensive and cogently reasoned decision shows any error on a point of law. It is quite evident from the content of the decision that the judge gave proper and careful consideration to the evidence put before him without any preconceived notions. No error is shown.

Notice of Decision

The decision of the First-tier Tribunal does not show an error on a point of law and shall stand.

Anonymity

Anonymity was not requested nor do I consider it appropriate in this appeal.

Signed

Date

Deputy Upper Tribunal Judge Garratt