



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

Appeal Number: IA/46884/2014

THE IMMIGRATION ACTS

**Heard at Field House, London
On 19 October 2015**

**Decision & Reasons Promulgated
On 6 November 2015**

Before

**The President, The Hon. Mr Justice McCloskey
and Upper Tribunal Judge Frances**

Between

FABIEN RICHARDO ARTERO BROWN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant: Ms Vastisk, of Counsel, instructed by Eagle Solicitors
Respondent: Ms A Vijiwala, Senior Home Office presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant has been granted permission to appeal against a decision of the First-tier Tribunal (the "FtT") promulgated on 28 May 2015.

2. The essence of the application for permission to appeal was unfairness. More closely examined, the error or law complained of was the failure of the FtT to adjourn the hearing. Permission to appeal was granted accordingly. The Respondent has, by its Rule 24 Notice dated 14 September 2015, stated that it does not oppose the appeal in the sense and to the extent that an error of law of the kind identified in the grant of permission is now conceded. It seems to us that that the principles that are engaged by this appeal are those contained in the decision of the Upper Tribunal in Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC). In short the overarching test to be applied is whether the failure of the FtT to adjourn the hearing in the circumstances prevailing deprived the Appellant of his inalienable right to a fair hearing.
3. We had formed the provisional view that this test was satisfied. That view is now confirmed by the concession on behalf of the Respondent. While such concession is not binding on this Tribunal we consider that it is nonetheless properly made in the context of this appeal.
4. Accordingly we set aside the decision of the FtT. Having regard to the guidance on retention/remittal, the nature of the error of law which we have identified is such as to indicate that remittal is appropriate given that the Appellant did not, in our judgment, have a fair hearing at first instance. Accordingly we remit.
5. This case is crying out for case management directions. We are going to exercise our power to include directions in our order, those directions will be notified to both parties in early course. We emphasise the critical importance of the Appellant's legal representatives complying fully with the directions which will be given. This case has an unfortunate history and we do not wish either the FtT or this Tribunal, on further appeal, to form the impression that the system of the Tribunal is in some way being misused. Such impression which could conceivably be formed, given the history. If there are any further omissions or defaults of the kind which have occurred in this case, which include the last minute withdrawal of representation at first instance and the eleventh hour engagement of Counsel, who was not instructed until yesterday evening (quite unacceptable professional practice), there could be serious repercussions.

DIRECTIONS

6. These are as follows:
 - (i) The Appellant's bundle, to contain all relevant documentary materials, witness statements and everything else upon which he is relying, will be prepared in indexed and paginated form.

- (ii) The Appellant's bundle will be filed with the First-tier Tribunal at Taylor House, London and served on the Respondent's representative by **01 December 2015 at latest.**
- (iii) The First-tier Tribunal will convene a case management hearing thereafter, on notice to both parties.

Seamus McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Date: 30 October 2015