



IAC-HX-DML-V1

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

Appeal Number: IA/06590/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 October 2015**

**Decision & Reasons Promulgated  
On 7 January 2016**

**Before**

**UPPER TRIBUNAL JUDGE CONWAY**

**Between**

**MS GRACE OLUWAFUNMILAYO FOLORUNSHO  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Hena  
For the Respondent: Ms Sreeraman

**DECISION AND REASONS**

1. The Appellant is a citizen of Nigeria born in 1967. She appeals against a decision of the Secretary of State made on 13 January 2014 to refuse her application for indefinite leave to remain outside the Immigration Rules.
2. The immigration history is that she arrived on 23 March 2006 on a student visa valid until 3 September 2006. On 29 August 2006 she sought leave to remain as a nurse in a supervised practice but this was refused on 6 October 2006. An appeal was dismissed on 28 November 2006.

3. On 22 December 2006 she sought leave to remain as a student which was granted until 31 January 2008. On 22 January 2008 she sought further leave to remain as a student which was granted until 31 October 2009.
4. On 21 October 2009 she sought further leave to remain as a Tier 4 (General) Student which was granted until 28 February 2011.
5. A still further application was made for leave to remain as a Tier 4 (General) Student which was granted until 30 May 2013. On 22 May an application was made for indefinite leave to remain outside the Rules on compassionate grounds. It is that application which formed the subject of the appeal.
6. The Respondent considered the application in respect of any family/private life the Appellant might have established in the UK. Under family life she had to satisfy paragraph A277C and Appendix FM of the Rules. She did not claim to have a child or partner in the UK and did not meet the requirements of Appendix FM and her application was refused under paragraph D-LTRP.
7. Her private life was considered under paragraph 276ADE but she had not lived in the UK for a continuous period of 20 years. The majority of her life had been spent in Nigeria. She had ties in Nigeria. Her application was refused under paragraph 276CE with reference to 276ADE.
8. The Respondent did not accept that the Appellant had provided evidence of any sufficiently compelling or compassionate circumstances which would justify a grant of leave outside the Rules.
9. She appealed.
10. The Appellant did not attend the hearing at Hatton Cross on 17 March 2015 before Judge of the First-tier Quinn. At paragraph [2] of his decision he stated: "*Notice of the hearing was sent to the Appellant on 7 April 2014 to her correct address. The Appellant sent an email on 16 March indicating that she was not feeling well and she would not be able to attend the court case on 17 March. No representative appeared on her behalf*". The judge proceeded to hear the appeal in absence under Rule 28(a) and (b) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.
11. In summary, he found that the Appellant had spent most of her life in Nigeria. Although she had been absent for 7 years she had social, cultural and family ties there. She had come as a student and had not had permission to work apart from 10 hours a week in term time. She could not satisfy the Rules. She "*appeared to be trying to get around the Rules.*" If she intended to come to the UK to work originally she needed a Tier 1 or Tier 2 work permit but she had not applied for this. "*She came here to study and is at the end of her studies.*" [25]

12. The judge found that the Appellant is in good health, with a good education and should have no difficulty in obtaining employment in Nigeria.
13. She had, he concluded, *“not provided evidence of any sufficiently compelling or compassionate circumstances which would justify a grant of leave to remain in the UK on an exceptional basis outside of the Immigration Rules”*. [29]
14. He went on to dismiss the appeal under the Immigration Rules and on human rights grounds.
15. Permission to appeal was sought. The grounds contend that the decision of the judge is vitiated by a procedural error of law, namely that on the date of the hearing the Appellant had telephoned the Tribunal to request an adjournment on the basis of ill health but that the judge proceeded to hear the appeal in her absence.
16. Permission was granted by a judge on 29 July 2015 who stated:

“...  
2. It is submitted that the Appellant was unable to attend the hearing due to illness. At paragraph 2 of the Decision and Reasons it states that the Appellant sent an email on 16 March 2015 to the Tribunal indicating she was not well and would not be in attendance the next day which was the date of the hearing. The judge noted that there was no representative and proceeded to hear the case in the Appellant’s absence. ... The grounds state that the Appellant telephoned the Tribunal on the day of the hearing to request an adjournment and the Tribunal was informed. It is arguable that the judge did not receive the Appellant’s request. If he had and the Appellant had been granted an adjournment and thereafter had been able to attend on another day, the evidence may have made a material difference to the outcome or to the fairness of the proceedings.  
3. The grounds state that confirmation of the Appellant’s illness is supported by a GP letter which accompanied the grounds. Unfortunately no letter was lodged. However this does not take away from the fact that the judge appears to have been given no notification of the request for an adjournment by the Appellant on the day. The fact that there is a GP letter (which no doubt can be produced for the next stage of the Appellant’s appeal) simply supports the reason why the Appellant could not attend the hearing.”
17. At the error of law hearing before me Ms Hena lodged a skeleton argument. In summary, her position was that on 16 March 2015, the day before the hearing, the Appellant sent a short email to her solicitor stating she was not well and had seen her GP and needed to have blood tests. As a result she would not be able to attend the hearing. The solicitors forwarded the email to the Tribunal.
18. The solicitors uncertain of how ill the Appellant was, needed further information, so no application for an adjournment was made on 16 March

2015. The Appellant did not respond to the solicitor's enquires about her health.

19. On the day of the hearing a member of the Tribunal staff and the solicitors spoke on the telephone. Ms Hena could not say who contacted whom or the details. But she recalls that the Tribunal were told that the Appellant was ill and could not attend. In the absence of instructions from the Appellant as to her state of health the barrister who had been instructed to appear was cancelled. No one appeared for the Appellant.
20. No medical note was submitted at the time, only, Ms Hena added, with the grounds seeking permission.
21. The judge's decision to proceed in absence was, in her submission, unfair. She asked that the case be set aside to be reheard.
22. Ms Sreeraman's position was that the judge had directed himself appropriately. No adjournment request had been received. It did not appear even at this stage that there was any medical evidence. There was no unfairness.
23. In considering this matter the only issue is whether the decision of the judge to proceed with the hearing was vitiated by procedural error by his proceeding in absence despite, it is claimed in the grounds, an adjournment request having been made on the basis of the Appellant's ill health.
24. The issue is one of fairness. In **Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC)** it was held that if a Tribunal refused to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing.
25. The first problem for the Appellant is that it is accepted that there was no written adjournment request before the judge, merely a brief email from her dated 16 March 2015 forwarded by the solicitors stating that she is "*not feeling well (sick) at this moment*". She had "*seen her doctor and I've asked to do some series of blood tests*". She would not be able to attend the hearing the next day.
26. It may well be that on the day of the hearing there was a telephone call between the solicitors and the Tribunal administration although Ms Hena could not remember the details. All she could say to me was that it was explained that the Appellant was ill and could not attend. It is not clear that an adjournment was sought orally via the administration.

27. What is clear is that no written application was made on the day. Such could easily have been done by fax or email. The solicitor's decision not to do so was apparently because the Appellant failed to respond to their request for instructions in relation to her ill health. Their lack of confidence in their client was such that the barrister was cancelled and nobody, even from the firm, appeared before the judge to make an oral application which would have been the appropriate course.
28. Strikingly, despite the claim in the grounds: "... 2. *The Appellants (sic) did not attend the hearing. She was unable to do so through ill-health. Evidence from the First Appellant's GP to that effect accompanies the grounds*"; and despite the comment by the judge who granted permission that no medical letter was before him but "*which no doubt can be produced for the next stage of the Appellants appeal*"; and despite Ms Hena repeating that it was submitted with the grounds, when asked to produce it she could not do so.
29. Thus, in summary, the situation is as follows. No adjournment request on the basis of the Appellant's claimed ill health was made the day before the hearing. It is not established that any such request was made orally on the day of the hearing via the administration. No adjournment request was made on the day when the case called to the judge orally or in writing the reason being that the solicitors did not have instructions from the Appellant with the result that they cancelled the attendance of counsel and no one attended. No medical evidence in support of the claim by the Appellant that she was unable to attend due to ill health and which would thus have given good reason for an adjournment was submitted at the time or at any time subsequently.
30. The decision of the First-tier Tribunal Judge to proceed in absence for the reasons he gave shows no unfairness. There was no procedural irregularity capable of making a material difference to the outcome or the fairness of the proceedings.
31. No challenge had been made to his decision on the merits of the case.

### **Notice of Decision**

The decision of the First-tier Tribunal shows no material error of law and that decision dismissing the appeal shall stand.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Conway