



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

Appeal Number: DA/00428/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23 November 2017**

**Decision & Reasons  
Promulgated  
On 27 November 2017**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

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

Appellant

**and**

**MR FARID CHAOU**  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Ms K Pal, Senior Home Office Presenting Officer  
For the Respondent: Ms U Dirie, counsel instructed by BID

**DECISION AND REASONS**

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge D Alty, promulgated on 27 June 2017. Permission to appeal was granted by First-tier Tribunal Judge EB Grant on 20 July 2017.

Anonymity

2. No direction has been made previously, and there is no reason for one now

## Background

3. The respondent is a French national who came to live in the United Kingdom in the year 2000. He has acquired a string of convictions, the last being for affray which resulted in a 13-month sentence of imprisonment on 13 March 2015. The respondent has a partner and two minor children in the United Kingdom now aged 7 and 4.
4. The decision to deport the respondent under the Immigration (European Economic Area) Regulations 2006 was made on 21 July 2015. His appeal was initially heard in his absence on 8 December 2015 and dismissed. He was removed from the United Kingdom on 10 April 2016. The said decision was set aside by the Upper Tribunal and his appeal was remitted to the First-tier Tribunal where it was dismissed, again in the respondent's absence, on 8 August 2016. That decision was also set aside by the Upper Tribunal and it was listed before Judge Alty on 8 June 2017.
5. The respondent applied for readmission to attend the hearing of his appeal under Regulation 29AA of the 2006 Regulations but was refused owing to the Secretary of State's concerns that he would pose a danger to the public if readmitted. The respondent did not challenge that decision by way of judicial review.

## The hearing before the First-tier Tribunal

6. At the hearing before the First-tier Tribunal, the judge heard oral evidence from the respondent's partner and submissions from both representatives. Despite hearing arguments solely regarding whether the decision to remove the respondent from the United Kingdom was justified and proportionate, the judge allowed the respondent's appeal under Article 8 ECHR because he had not been allowed to re-enter the United Kingdom to give evidence and had not therefore had an effective hearing, Kiarie & Byndloss [2017] UKSC 42 applied.

## The grounds of appeal

7. The Secretary of State's grounds of appeal argued firstly, that the judge ought to have used the powers within [2] of the Tribunal Procedure Rules 2014 to address the effectiveness of the hearing or to have afforded the Secretary of State the opportunity to ensure that the respondent's rights were not breached. It was contended that the judge had no regard to the reasons why the Secretary of State considered to be too dangerous to admit the respondent under regulation 29AA. Secondly, it was argued that the First-tier Tribunal materially misdirected itself by failing to consider whether the decision to deport the respondent was justified.
8. Permission to appeal was granted on the basis sought.
9. The respondent's Rule 24 response, received on 24 August 2017, argued that the judge was correct to find that the respondent had been deported without benefitting from the necessary procedural safeguards contrary to

Article 8 ECHR. It was also submitted that the respondent's deportation was contrary to Article 7 of the Charter of Fundamental Rights of the European Union. It was noted that the Upper Tribunal had previously refused to give the respondent permission to give evidence by Skype. Reliance was placed on the judgment in Kiarie as well as guidance given in Nare [2011] UKUT 443 as to how the Tribunal should approach an application for a direction that evidence be given by video link. It was argued that the Tribunal was not in a position to find that those conditions could be met. Lastly, it was said to be "immaterial" that the judge made no findings in relation to Regulation 27 of the 2016 Regulations.

10. On 25 September 2017, there was a case management review hearing, the outcome of which was that Upper Tribunal Judge Gleeson directed that this matter be listed for an error of law hearing and that each party was to file a skeleton argument addressing the applicability of Kiarie to EEA Regulation deportations as well as the directions available to the First-tier Tribunal.
11. The Secretary of State applied for an adjournment of the error of law hearing on 3 November 2017. The reason for that application was that the Secretary of State wished for this hearing to be adjourned and stayed pending the guidance expected from the Upper Tribunal in the test cases of ACJ (Nigeria) (HU/03027/2015) and Bola-Audu (HU/00023/2015). The said cases which were to address the practical impact of Kiarie had themselves been stayed pending a Court of Appeal judgment in test cases relating to section 94 certificates and out of country appeal rights generally. That application was refused because there was no indication that the aforementioned cases touched on "the discrete issues raised concerning appeals under the EEA Regulations where there is a possibility of return."

### The hearing

12. When this matter came before me, neither party had complied with the directions of Judge Gleeson. Ms Pal's explanation was that she would rely on a brief document headed "Deport submissions" and that she intended to renew the adjournment application. Ms Dirie stated that she wished to rely on the Rule 24 response. I heard submissions from both representatives on the renewed adjournment application. Ms Pal was unable to provide any further information about the test cases and Ms Dirie, who took instructions, was able to say little other than to indicate her client's objection to the adjournment. I declined the application for the reasons given previously as well as the lack of clarity as to the length of any stay and invited submissions as to whether there was an error of law in the decision under challenge.
13. Ms Pal argued that the judge had no power to adjudicate on the issues of the respondent's non-admittance to the United Kingdom for the purpose of attending his appeal hearing. The judge had gone beyond his or her powers. She contended that the judge ought to have had regard to the

Tribunal's procedure rules in order to ensure the proceedings were fair and just.

14. Ms Pal suggested that the judge could have transferred the appeal to another hearing centre where video link facilities were available. The judge had erred in finding that the respondent's deportation was unlawful because he was unable to attend the hearing of his appeal. Otherwise, Ms Pal reiterated the Secretary of State's grounds of appeal and she invited me to find an error of law and remit the matter to the First-tier Tribunal once more.
15. Ms Dirie relied on the Rule 24 response. She described the respondent's family circumstances as well as the difficulty he had experienced in finding representation. She argued that there were no facilities for Skype, no mention of video link and that the appellant was unable to effectively participate in the hearing. She contended that this amounted to an unlawful interference with his right to a family life. Ms Dirie confirmed that the respondent had not sought a judicial review of the Secretary of State's refusal to readmit him to the United Kingdom.

#### Decision on error of law

16. As acknowledged at [10] of the decision and reasons, there was one issue before the First-tier Tribunal, that of whether the respondent was justified in deporting the respondent from the United Kingdom owing to his offending history. At [29], the judge further acknowledges that he or she has not considered this issue. Thus, the issues in the appeal went without determination. That alone is a material error of law. Furthermore, the judge appeared to take no procedural steps to address the difficulties encountered in relation to the respondent's effective participation in the appeal. Lastly, the judge was not entitled to adjudicate on the issue of the respondent's removal pending his appeal, a matter regarding which no submissions were made and which had gone unchallenged by the respondent.

#### **Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.**

**The decision of the First-tier Tribunal is set aside.**

**The appeal is remitted, de novo, to the First-tier Tribunal to be reheard by any judge except First-tier Tribunals Judges Alty, Grimmett or Brunnen**

#### **Directions**

This appeal is to be listed for a case management review hearing for discussion of the practical arrangements for the hearing of the substantive appeal. The

CMRH is to be listed at Taylor House for the convenience of the representatives who are acting Pro Bono.

Signed  
Upper Tribunal Judge Kamara

Date 12 December 2017