



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

Appeal Number: IA/32806/2014

THE IMMIGRATION ACTS

**At Field House
On Papers 19 February 2019**

**Decision & Reasons Promulgated
04 September 2019**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

LASISI ABUDU IBRAHIM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**NOTICE PURSUANT TO RULES 48 AND 45/46 OF THE TRIBUNAL
PROCEDURE (UPPER TRIBUNAL) RULES 2008**

NOTICE AND DIRECTIONS

- 1.** The Appellant seeks permission to appeal a decision of Deputy Upper Tribunal Judge Norton-Taylor promulgated on 11 November 2016 (“the Decision”). The application has been made on a form which is used to seek permission to appeal to this Tribunal against a First-tier Tribunal decision. As an application to challenge a substantive decision of this Tribunal, the appropriate course was to apply for permission to appeal the Decision to the Court of Appeal. However, in light of the circumstances set out below, I exercise my discretion to treat the application as if it were made on the form seeking permission to appeal to the Court of Appeal.
- 2.** It will be readily apparent from the foregoing that the application is very substantially out of time (over two years). The application was not made

until 19 February 2019. The Appellant relies on the change in the law arising from the Court of Appeal's judgment in Khan v Secretary of State for the Home Department [2017] EWCA Civ 1755 and the European Court's judgment in Banger. In fact, it is the former of those two judgments which is most directly relevant because the basis of the application is that the Judge wrongly concluded that there was no jurisdiction to deal with the Appellant's appeal in light of the judgment in Sala (EFM: right of Appeal) [2016] UKUT 00411 (IAC). The judgment in Khan dates back to November 2017 and there is no explanation of the delay in making the application since that date. However, the Appellant has not had a determination of his appeal on the merits because of case-law which was subsequently held to be wrongly decided. Notwithstanding the lengthy delay (which has resulted in the Tribunal's file being destroyed) and in spite of the fact that no good reason is given for the delay after November 2017, I have decided in my discretion that this amounts to another good reason to extend time and I therefore extend time for the making of this application.

3. I turn then to the substance of the application for permission to appeal the Decision. Pursuant to Rule 48 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I can treat an application for permission to appeal as an application to review the Decision and I treat the Appellant's application accordingly.
4. Rule 45 permits the Tribunal to review its decision if one of the criteria in Rule 45(1) is met. Rule 45(1)(b) provides that the Tribunal may review its decision in accordance with Rule 46 if "since the Upper Tribunal's decision, a court has made a decision which is binding on the Upper Tribunal and which, had it been made before the Upper Tribunal's decision, could have had a material effect on the decision." Following the Court of Appeal's judgment in Khan, that is the position here. Based on that judgment, it may be appropriate to review the Decision and to set it aside.
5. However, Rule 46(3) provides that, if I take any action in relation to the Decision following a review without giving a party the opportunity to make representations, the notice must state that and give that party the opportunity to make representations for the notice to be set aside and for the Decision to be reviewed again.
6. In light of the above, I have decided that the appropriate course is to give both parties the opportunity to make representations in response to my intention to review the Decision, to set it aside and to remit the appeal to the First-tier Tribunal before proceeding to review it. I have given directions below.

Directions

- 1. Within fourteen days from the date when this notice is sent, any party wishing to object to the course proposed at [6] above must file and serve on the other party written representations setting out their objections.**
- 2. If no representations are received within that time period, this Notice will be treated as a decision to review and set aside the Decision of Deputy Upper Tribunal Judge Norton-Taylor promulgated on 11 November 2016 and the appeal will be remitted to the First-tier Tribunal for re-hearing.**
- 3. In the event that the appeal is remitted, the parties will be expected to agree a consolidated bundle of the material which was before the Tribunal when the appeal was heard previously and to file a copy of that bundle with the First-tier Tribunal.**

Signed 
2019
Upper Tribunal Judge Smith

Dated: 28 February