



IAC-FH-CK-V1

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

Appeal Number: IA/27478/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 13th November 2015**

**Decision & Reasons Promulgated
On 21st December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR OLADELE MICHAEL SOLANKE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms A Everett, Senior Home Office Presenting Officer

For the Respondent: Mr M Blundell, Counsel instructed by UK Migration
Lawyers, Birmingham

DECISION AND REASONS
ON TIMELINESS ON CONDITIONAL PERMISSION TO APPEAL

1. Mr Solanke is a citizen of Nigeria whose date of birth is recorded as 26th September 1988. He made application for permission to remain in the United Kingdom which application for leave was refused on 31st July 2013. He appealed and on 23rd March 2015 the appeal was heard by Judge of the First-tier Tribunal Buckwell, who in a decision promulgated on 1st May 2015 allowed the appeal both under the Immigration Rules and on human rights grounds. In the First-tier, a significant focus of the Tribunal was upon the

suitability requirements and whether or not those had been met given the character, conduct and the like of Mr Solanke, as contended for by the Secretary of State.

2. Not content with the decision, the Secretary of State by Notice dated 15th May 2015 made application for permission to appeal to the Upper Tribunal. On 8th July 2015 Judge of the First-tier Tribunal Pooler refused permission. It is of note that that application for permission was made in time. The judge considered the grounds but was of the view that the grounds did not disclose any arguable error of law.
3. The Secretary of State was still not content and so on 28th July 2015 she made a renewed application for permission to appeal to the Upper Tribunal. On 3rd September 2015 Upper Tribunal Judge Plimmer purported to grant permission but did so without consideration of whether or not she needed to make a decision on the lateness of the application.
4. By Rule 21(3)(aa)(i) of the Tribunal Procedure (Upper Tribunal) Rules 2008 the Secretary of State for the Home Department had fourteen days after the agreed date in this case of 8th July 2015, within which to apply for permission to appeal.
5. Where permission has been granted but without an extension of time having been considered in circumstances where such is required then the grant of permission is to be treated only as conditional until such time as an extension is granted, if at all.
6. This matter first came before me on 23rd October 2015 when Mr Blundell took the point that there had been no extension of time granted in this case. He pointed to the reasons given by the Secretary of State for her lateness which are set out as follows:

“It is respectfully asked that the Tribunal extends the time limit for making this application. The main reason for delay was because the Specialist Appeals Team on behalf of the Secretary of State had a lack of resources following receipt of the determination to consider this appeal, having had to focus on more priority work instead. It is submitted that the Specialist Appeals Team have endeavoured to submit this appeal as soon as possible. The Secretary of State apologises for the delay but submits that it was a short one and is unlikely to have been prejudicial to the Respondent. An extension of time is respectfully requested.”
7. There is guidance as to the proper approach to be taken in cases such as this where an extension of time is sought and I refer to the case of **SS (Congo) [2015] EWCA Civ 387** from paragraph 93 onwards in which guidance in the earlier case of **R (Hysaj) -v- Secretary of State for the Home Department [2014] EWCA Civ 1633** was approved of. There are three stages to be followed:
 - (i) The first stage is to identify and assess the seriousness or significance of the failure to comply with the Rules. The focus should be on whether the breach has been serious or significant. If a judge

concludes that a breach is not serious or significant, then relief will usually be granted and it will usually be unnecessary to spend much time on the second or third stages; but if the judge decides that the breach is serious or significant, then the second and third stages assume greater importance.

- ii) The second stage is to consider why the failure occurred, that is to say whether there is a good reason for it. It was stated in **Mitchell [Mitchell MP -v- News Group Newspapers Ltd [2013] EWCA Civ 1537]**, at paragraph [41] that if there is a good reason for the default, the court will be likely to decide that relief should be granted. The important point made in **Denton & Ors -v- TH White Ltd & Ors [2014] EWCA Civ 906** was that if there is a serious or significant breach and no good reason for the breach, this does not mean that the application for relief will automatically fail. It is necessary in every case to move to the third stage.
- iii) The third stage is to evaluate all the circumstances of the case, so as to enable the court to deal justly with the application. The two factors specifically mentioned in CPR Rule 3.9 are of particular importance and should be given particular weight. They are (a) the need for litigation to be conducted efficiently and at proportionate cost, and (b) the need to enforce compliance with Rules, Practice Directions and court orders.”

8. I observe in relation to the reference to CPR that whilst they do not directly apply to the Upper Tribunal the overriding objectives lead one to the same principles. Was the breach in this case serious? The Secretary of State had fourteen days but she took a further six days. This is not a case in which the time was missed by a day but almost an additional fifty per cent of the time permitted. Still further, the Secretary of State had already made an application for permission to appeal to the First-tier Tribunal. It was not as if in the circumstances she needed to spend much time drafting fresh grounds. The grounds had already been drafted. Yet, in her own words, she had other work which required a greater priority; this clearly goes to the seriousness she thought related to this particular case. The failure due to insufficient resources cannot ordinarily be sufficient reason. Indeed it is trite law and a matter upon which the Tribunal has given guidance in the past and in respect of which the Court of Appeal itself made observations at paragraph 42 of **Hysaj**.

“I am unable to accept that the court can construct a special rule for public authorities. I am well aware that the resources of many public authorities are stretched to breaking point, but in my view they have a responsibility to adhere to the rules just as much as any other litigants.”

9. I turn then to the third stage which is to consider the merits. The court said in **Hysaj**, as set out at paragraph 95:

“If applications for extensions of time are allowed to develop into disputes about the merits of the substantive appeal, they will occupy a great deal of time and lead to the parties’ incurring substantial costs. In most cases the merits of the appeal will have little to do with whether it is appropriate to grant an extension of time. Only in those cases where the court can see without much investigation that the grounds of appeal are either very strong

or very weak will the merits have a significant part to play when it comes to balancing the various factors that have to be considered at stage three of the process. In most cases the court should decline to embark on an investigation of the merits and firmly discourage argument directed to them ...”

10. I cannot say that this is a case which is obviously strong or weak. Given that there were arguments that could have been advanced in relation to the seriousness of a series of cautions and the nature of the offences, I am bound by the guidance in the Court of Appeal to look to whether or not an extension should be granted having regard to the reasons given. I have already indicated that the reasons are not good enough and in those circumstances the application for permission to appeal to the Upper Tribunal is dismissed and in those circumstances there is no appeal before me.

Notice of Decision

Permission to appeal is refused.

Signed

Date

Deputy Upper Tribunal Judge Zucker