



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

Appeal Number: HU/12630/2015

**THE IMMIGRATION ACTS**

**Heard at Liverpool  
On 21 April 2017**

**Decision &  
Promulgated  
On 11 May 2017**

**Reasons**

**Before**

**DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL**

**Between**

**OLOIDI MAYOWA OLANIYI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr B Adewusi, Solicitor, Crown & Law Solicitors  
For the Respondent: Mr A McVeety, Home Office Presenting Officer

**DECISION ON ERROR OF LAW**

1. In a decision made on the papers sent on 15 August 2016 First-tier Tribunal (FtT) Judge Thorne dismissed the appellant's appeal against a

decision made by the respondent on 16 November 2015 refusing him leave to remain. The appellant is a citizen of Nigeria.

2. The sole ground of challenge is that the judge erred in law by hearing the appeal in the absence of the appellant who had requested an adjournment in writing. It was submitted that the judge failed to mention the adjournment request or to say he was refusing it “even though the court clerk phoned our office on the day of the hearing and was told that the instruction to request for adjournment still stood”. Mr Adewusi confirmed that this observation was in respect of the day of the hearing that had been earlier fixed for 29 July 2016.
3. The only documents on file that relates to adjournment concerns a request made on 28 July from Crown and Law Solicitors stating that they have been instructed and were requesting an adjournment of the hearing scheduled for 29 July 2015 in Manchester as they were trying to raise the necessary funds to pay for legal representation. In response to this request the hearing was adjourned on 29 July. However, the handwritten note on the file states “adj 29/7/16 Treat as a paper case”. Before the word “paper” the word “float” has been crossed out. As far as is discernible from the file, therefore, the appellant’s application for an adjournment of his oral hearing was granted, but this was never formally communicated to him or his representatives. The case then appears to have ended up – as a result of the direction written on the file – for consideration by a FtT Judge on the papers. I find it very surprising that there is nothing on file to indicate any attempt by the appellant or his solicitors to establish either (i) what had happened about their adjournment request, or (ii) when the appeal would be relisted for a hearing. I would have gone further and said it was unprofessional, but on the strength of what Mr Adewusi told me it may have been that they thought they had been told to await a letter. However, it remains very difficult to follow why at the stage of adjournment on 29 July 2016 the case was classified as a ‘paper case’. The appellant had requested an oral hearing and had paid the appeal fee.
4. In the circumstances I consider that the grounds of appeal are made out. Given that the FtT had decided to adjourn the appeal on 29 July 2016, it was necessary in the interests of fairness and good administration for the parties to have been notified what would happen next. If a case management decision to treat it as a paper case had been made, the appellant and his solicitors – and indeed the respondent – should have been given notice of this, so as to have an opportunity to comment on that decision before the case went before a FtT judge for promulgation.
5. It is not clear to me whether FtT Judge Thorne was fully sighted as to the previous history of this appeal but whether or not Judge Thorne was blameless there was a procedural irregularity which negated a fair hearing.

6. Accordingly I conclude that the FtT Judge materially erred in law and that his decision should be set aside.
7. The case is remitted to the First-tier Tribunal.

No anonymity direction is made.

Signed

Date: 8 May 2017

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a long, sweeping tail on the letter 'y'.

Dr H H Storey  
Judge of the Upper Tribunal