



IAC-FH-NL-V1

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

Appeal Number: IA/22460/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 14 December 2016**

**Decision &
Promulgated
On 9 October 2017**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**MUFATAU ABIMBOLA AFOLABI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim of Counsel

For the Respondent: Ms A Ahmed, a Home Office Presenting Officer

DECISION AND REASONS FOR FINDING A MATERIAL ERROR OF LAW

Introduction

1. The appellant was born on 26 April 1978 and is Nigerian.
2. The present appeal is by the appellant against the decision of the First-tier Tribunal (FtT) to dismiss his appeal against the respondent's decision under the EEA Regulations.

3. Unfortunately, the Judge of the First-tier Tribunal (FtT Judge Watt – the Immigration Judge) treated the case as though it were a paper appeal when in fact, it seems, the appellant had requested an oral appeal and had attended the hearing with a representative with a view to giving evidence in support of his case.
4. Judge of First-tier Tribunal Osborne considered the present application for permission to appeal against the decision of the FtT on 9 December 2016 and decided it was appropriate to grant permission to appeal to the Upper Tribunal. All issues raised in the grounds were allowed to be argued. He pointed out that at the hearing the appellant had waited in a public area until approximately 3:30pm, when he was informed that his case had been disposed of on paper without the need for him to attend the hearing room.
5. As Judge Osborne comments, the FtT appears to have reached a procedurally unfair decision. The case had been listed as a paper case but the appellant and his solicitor had attended court and should have been given an opportunity to be heard before the tribunal reached a decision.

The hearing before the Upper Tribunal

6. At the hearing I heard brief oral submissions by Mr Karim for the appellant and Ms Ahmed for the respondent. They both candidly accepted that because there had not been a fair hearing before the FtT it was necessary to remit the matter back for a fresh hearing. I acceded to their consensual remittal and made appropriate directions for the onward conduct of this matter. I suggested that in future, at Mr Karim's suggestion, the matter should not be listed as a floating case.
7. I concluded at the end of the hearing that the matter should be remitted to the First-tier Tribunal and I now provide very brief reasons for the remittal.

Summary of conclusions

8. Having carefully considered the reasons given by the Immigration Judge I am afraid they are tainted by the fact that he had not had an opportunity to hear the appellant's account. Ordinarily this would not make a difference but here it is clear the appellant could have given an explanation as to a number of the documents produced and it might have materially affected the outcome. Furthermore, justice should be seen to be done and this includes giving all the litigants an opportunity to present their case in the manner that they see fit provided this is consistent with the requirements of the rules and the requirement for proportionality.

Decision

9. It is my decision therefore to allow the appellant's appeal against the decision of the FtT and remit the matter to the FtT for it to make a fresh decision. None of the findings of the FtT shall stand and it will be

necessary to hold a *de novo* hearing in due course. Directions for that hearing will be sent out by the FtT.

10. No anonymity direction was made by the FtT and I make no anonymity direction.

Signed

Date

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

Although I have allowed the appeal to the UT there has been no fault on the part of the respondent and I make no fee award.

Signed

Date

Deputy Upper Tribunal Judge Hanbury