



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/28331/2013**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 11th December 2017**

**Decision & Reasons Promulgated
On 12th December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**MS MUINAT OMOTOLA OREMOSU
(NO ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The appellant attended in person with her daughter
For the Respondent: Mr Tarlow Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Ms Muinat Omotola Oremosu date of birth 12 May 1950, is a citizen of Nigeria. Having considered all the circumstances, I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge D Ross promulgated on 1st March 2017 whereby the judge dismissed the appellant's appeal against the decision of the Secretary of State for the Home Department. The Secretary of State had refused the appellant indefinite leave to remain in the United Kingdom as a dependant of her daughter in the UK under the Appendix FM of the Immigration Rules.
3. In granting leave Upper Tribunal Judge Pitt stated:-

It is arguable that the FTTJ took an incorrect approach to the evidence concerning good service and the previous decision accepting that she had received notice of an earlier First-tier Tribunal hearing. It is not clear from the decision if the point was put to the appellant or her daughters or what evidence was taken into account, the history of the appeal being somewhat

convoluted and are undisputedly being Tribunal notices to the appellant at an incorrect address. The credibility of the appellant and her daughters is material to both the article 8 and article 3 ECHR assessments.

4. It appears that the appellant arrived in the United Kingdom on 7 February 2012 travelling on a multi-entry visit visa which was valid from 3 March 2011 to 3 March 2013.
5. Whilst in the UK the appellant suffered medical problems and she applied for leave to remain. On 1 May 2012 the appellant applied for indefinite leave to remain in the United Kingdom as the dependant of her daughter who was present and settled in the United Kingdom. At the time of application the appellant was under the age of 65. The appellant is now over the age of 65.
6. In making the application the address give for the appellant in the application was :-

[] [address 1]

It is now claimed that that address was entered in error.
7. Despite that allegedly being the address for the appellant, the respondent was writing to the appellant at :-

[] [address 2]

It is accepted that that was the correct address for the appellant and her sponsor
8. There is in the papers a copy of the application form which refers to the appellant as living at [] and the sponsor also living at [].
9. By decision of 5 June 2013 the appellant's application for variation of leave, i.e. further leave, was refused. Further to that there was also a decision to remove the appellant from the United Kingdom made on the same day of 5 June 2013.
10. On the 5th November 2014 a letter from a Member of Parliament which refers to the appellant as living at [] address 1.
11. The appellant appealed against that decision and her appeal was first heard on 9 November 2015.
12. It appears that the appellant had asked that the appeal be determined on the papers. A judge had previously determined that there should be an oral hearing and notice of hearing was sent out. As is evident from the record of proceedings of 4 October 2016 the notice of hearing had been sent to ostensibly the wrong address. Whilst it was sent to the address, which was believed to be the one notified by the appellant to the Tribunal for service, it was acknowledged on 4 October that there was an error and the correct address should be address 2.
13. The Notice of Hearing was sent out for the hearing on the 9 November but it appears that there was no attendance by the appellant or anyone acting on

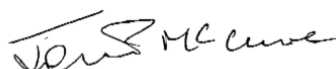
her behalf. According to the records it was sent to address 2. The appeal was heard by First-tier Tribunal Judge Black.

14. Subsequent to that the appellant had written to the Tribunal indicating that she had not had notice of the appeal hearing. There was some evidence that notices in respect of other individual appellants were being sent to the address of the appellant and her sponsor despite the fact that the individuals had no connection with either.
15. As a result of the letter and documentation, Resident Judge Poole considered the decision and set it aside under Rule 32 of the Tribunal Procedure Rules. It was directed that the matter be reheard.
16. Thereafter the matter came before First-tier Tribunal Judge D Ross on the 15 February 2017. At that stage there was no representative for the appellant and no representative for the respondent. Central to a consideration of the appeal was the credibility of the appellant and her daughters. The judge heard evidence from the appellant and her daughters. The judge in assessing the issue of credibility started by revisiting the issue of whether or not the appellant had received notice of hearing in the past. That had been decided and ruled upon by Resident Judge Poole. The judge however made it a central element of the assessment of the credibility of the witnesses.
17. Before me the representative for the respondent accepted given all the circumstances the judge was left in a very invidious position without the assistance of a representative for the respondent. However before me the representative for the respondent accepted that the judge's approach to the evidence disclosed material error of law. That error relates to failing to give the appellant and her daughters the opportunity to explain the complications that had arisen with regard to the service of notice of hearing on them and whether they had had notice of hearing. The representative for the respondent accepted in the circumstances that as it was a fundamental basis for the findings of fact. It was accepted that there was a flaw in the decision and the decision could not stand.
18. In the light of that concession I find that there is a material error of law in the decision of the First-tier Tribunal Judge. The error of law impacts upon the findings of fact made by the Tribunal Judge. The findings of fact cannot stand. I therefore direct that the appeal be heard afresh in the First-tier Tribunal. I set the decision aside and remit the case back to the First-tier Tribunal.

Notice of Decision

19. I allow the appeal to the extent that the appeal is remitted back to the First-tier Tribunal.
20. I do not make an anonymity direction

Signed



Date 11th December 2017
Deputy Upper Tribunal Judge McClure