



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-005491**  
**First-tier Tribunal No:**  
**HU/00462/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 05 June 2023**

**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

**ISRAEL MAYOWA JOLAYEMI**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Determined on the papers on 31 May 2023**

**DECISION AND REASONS**

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Thorne promulgated on 11 August 2022, in which the Appellant's appeal against the decision to refuse his human rights claim was dismissed.
2. The Appellant is a national of Nigeria who applied for leave to enter the United Kingdom to join his mother on 13 September 2021. The Respondent refused the application on the basis that the Appellant did not meet the requirements of the Immigration Rules set out in Appendix FM and there were no exceptional circumstances to warrant a grant of entry clearance outside of it.
3. Judge Thorne dismissed the appeal in a decision promulgated on 11 August 2022 on the following grounds. The only papers before the Tribunal were the notice of appeal and refusal letter and it was found that the Appellant had not responded to any of the points of refusal nor had he submitted sufficient evidence to establish that he met the requirements of the Immigration Rules nor that in any event there would be any breach of Article 8 of the European Convention on Human Rights.

## **The appeal**

4. The Appellant appeals on a procedural fairness ground in that the appeal was determined on the papers despite a request from the Appellant for an oral hearing, which seems not to have been recorded by the First-tier Tribunal.
5. The appeal form dated 5 March 2022 is stated to be from the Appellant, but has on its face been completed by the Sponsor (without her details being included) and includes when asked a preference for the appeal to be considered on the papers. It is said that the Appellant instructed a legal representative in June 2022 and that they wrote to the First-tier Tribunal on 17 June 2022 to place themselves on record and request an oral hearing, with copies of an e-mail, forms of authority and letter provided. The e-mail is correctly addressed and shows being sent on 17 June 2022 at 11:50.
6. I granted permission on the basis that it was arguable that there had been a procedural error in this appeal in that the request for an oral hearing and legal representatives being placed on record had not occurred when requested. There was further no consideration by the Judge as to whether the appeal could fairly proceed on the papers. In these circumstances, I issued directions with the grant of permission indicating my preliminary view that there had been a procedural error amounting to an error of law such that the decision should be set aside and the appeal remitted to the First-tier Tribunal for a de novo hearing. The parties were directed to make written submissions if there was any objection to this proposal and none were received.

## **Findings and reasons**

7. For the reasons given in the grant of permission and repeated above, I find a procedural error in the First-tier Tribunal's determination of this appeal which amounts to a material error of law and I set aside the decision of the First-tier Tribunal. Given the nature of the procedural error, the Appellant has not had a fair hearing of his appeal and it is therefore appropriate to remit the appeal to the First-tier Tribunal for a de novo hearing....

## **Notice of Decision**

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

The appeal is remitted to the First-tier Tribunal for a de novo hearing before any Judge except Judge Thorne.

**G Jackson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**31<sup>st</sup> May 2023**