



**Upper Tribunal
(Immigration and Asylum Chamber)**
DA/00738/2014

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Columbus House, Determination Promulgated
Newport On 12 November 2014 On 24 November 2014**

Before

The President, The Hon. Mr Justice McCloskey

Between

WO

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant: Mr A Chakmakjian (of Counsel), instructed by Leonard
and Company Solicitors

Respondents: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REMITTAL

1. The Appellant appeals against the decision of the First-tier Tribunal (the "FtT") whereby his appeal against the Secretary of State's decision to deport him from the United Kingdom to his country of origin, Uganda, was dismissed.

2. I am satisfied that the FtT erred in law in failing to accede to the joint application of both parties to adjourn the hearing of the appeal. In its determination, the FtT described this in these terms, referring to the Secretary of State's representative:

"..... applied for an adjournment. He told the Tribunal that he had been instructed to make a 'strong' application by a case worker in the Respondent's criminal case work directorate so that the Respondent could investigate how new information impacts upon her deportation decision"

The "new information" emanated directly from the Metropolitan Police. It was to the effect that the alleged victim of the Appellant's criminality had sent a letter, authenticated by the Irish Police, stating that she had falsely accused the Appellant of the offences in question. The Police further intimated that they had completed an investigation with a view to prosecuting the victim for perjury and had submitted their file to the Crown Prosecution Service, awaiting a decision on prosecution.

3. On behalf of the Secretary of State, it was acknowledged by Mr Mills that the FtT had erred in law in refusing to adjourn the hearing. It was acknowledged that the tribunal had failed to attribute sufficient significance to both the nature of the new information and its origins viz the Metropolitan Police. The tribunal erred in proceeding with the appeal in circumstances where further evidence of potentially fundamental significance is materialising but not yet available. The adjournment refusal decision is further vitiated by a material misdirection in [8] of the determination. The fundamental error of law committed was the FtT's failure to consider and apply the overarching criterion of fairness. No consideration was given to either the applicable procedural rules or the governing principles, which are rehearsed in Nwaigwe - v - SSHD [2014] UKUT 00418 (IAC).
4. The decision of the FtT cannot be sustained in consequence.

DECISION AND DIRECTIONS

5. I decide as follows:
- (i) The decision of the FtT is set aside.
 - (ii) I remit the appeal to a differently constituted FtT.
 - (iii) The relisting of the remitted appeal will be stayed for a period of some seven months: relisting will not predate 01 July 2015.

- (iv) The FtT will conduct a case management hearing on the first available date following 01 July 2015.
- (v) Any application by the Appellant for a further stay will be made in writing, supported by particularised grounds and appending all relevant evidence, on seven days notice to the Respondent.

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 12 November 2014