



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

Appeal Number: IA/18116/2011

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 28 October 2014

On 31 October 2014

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PHILLIP GLADSTONE VALENTINE

Respondent

Representation:

For the Appellant: Mr Wilding, Home Office Presenting Officer

For the Respondent: Mr Cheng, Duncan Lewis & Co Solicitors

DECISION AND REASONS FOR NOT EXTENDING TIME

1. This is an application for permission to appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal against the decision of the Secretary of State to refuse to revoke a deportation order.
2. The respondent, hereinafter “the claimant” has been in the United Kingdom since 2001. In 2003 he committed serious criminal offences and he was sentenced to three years’ imprisonment in June 2004 on two counts on an indictment concerned with the supply of class A controlled drugs. Persons who commit offences of that kind are prime candidates for being deported and it is rather surprising that the claimant was not deported at an earlier stage. In fact there were a series of errors which led to the delay and the claimant’s appeal against the respondent’s refusal to revoke a deportation order did not come before the First-tier Tribunal until January 2014.

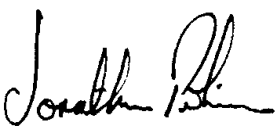
3. The First-tier Tribunal Judge was impressed with the age of the offence, the claimant's current attitude and his relationship with people in the United Kingdom. She was clearly of the view that the claimant was no longer involved in drug-taking and was remorseful and wanted to support his partner and their two young children. As is very often the case when appeals involving deportation matters are decided in the favour of the claimant the judge was concerned more with the effect of removal on those close to the claimant than on the claimant himself and she allowed the appeal.
4. The Secretary of State sought permission to appeal and permission was refused by a Designated First-tier Tribunal Judge.
5. Deportation has become a contentious area and there have been many developments in the law. It is therefore not entirely unsurprising that when the Secretary of State sought further permission to appeal and the case came before the Judge of the Upper Tribunal she gave permission because she was concerned that the First-tier Tribunal had not had proper regard to the decisions in the cases of **Gulshan (Article 8 - new Rules - correct approach)** [2013] UKUT 00640 (IAC) and **MF (Nigeria) v Secretary of State for the Home Department** [2013] EWCA Civ 1192. This does not mean that the First-tier Tribunal got the wrong answer. It meant that the Upper Tribunal Judge found it arguable that the legal underpinning of the decision was wrong. It may be that the judge was more concerned with the method of getting to the conclusion than the conclusion itself, I do not know.
6. The Upper Tribunal Judge considering the permission application failed to deal with an application to extend time. This is a regrettable mistake. The Secretary of State made it clear that her application was late. It should have been made no later than 18 March 2014 but it was in fact made on 6 June 2014. This was simply overlooked by the Upper Tribunal Judge.
7. Mr Wilding suggested that the wording of the grounds meant that extending time had been considered because it is headed "Reasons (Including Any Decision On Extending Time)". However, the one sentence explanation for giving permission plainly only relates to the reasons for giving permission to appeal and the Upper Tribunal Judge has given no consideration at all to the reasons for extending time. I am quite satisfied that the grant was provisional on time being extended.
8. Mr Wilding properly drew to my attention in outline submissions to the inherent merits of the appeal. Without in any way deciding on the appeal I have commented on these above. I have reminded myself of the decision of this Tribunal in **Mohammed (late application-First-tier Tribunal)** [2013] UKUT 00467 (IAC) which reviewed the procedures to be adopted when an application is made late. The Tribunal particularly drew attention to observations of the President, Blake J, in the decision of **Ogundimu (Article 8 - new rules) Nigeria** [2013] UKUT 60 (IAC). At paragraph 12 of its determination the Tribunal referred to paragraphs 16 and 20 in **Ogundimu** where it was made plain that:-

“There must always be a reason shown why time limits have not been complied with and the longer the period of non-compliance the more powerful those reasons should be. Whilst each case must be determined on its own facts, given the strict time limits in immigration appeals generally and the reason behind those time limits, the expectation is that it will be an exceptional case where permission to the appeal should be granted where there has been a significant delay in filing an application; by significant delay we would certainly include any period more than 28 days out of time.”

9. This application is rather more than 28 days late.
10. Strict time limits exist in part to ensure that mischievous claimants do not prolong their stay unmeritoriously. They also ensure that successful claimants are not left in a state of uncertainty and particularly that a person who believes that he has won his appeal should not be left for a prolonged period at risk of the decision being overturned on appeal.
11. Mr Wilding submits that this delay is the result of a mistake by one officer who was coming to the end of her time in the Secretary of State’s employment and simply made a mistake. I accept that explanation to the extent that I accept that this is an individual’s error rather than systemic failure although I do think it is a matter of surprise, given the importance attached to time limits, that the Secretary of State does not have a system of ensuring that officers are reminded of time limits. I am told that solicitors have a diary system which constantly reminds them of important time limits and that is something the Secretary of State might want to think about but that is entirely a matter for her.
12. I have here an application made very late for no good reason. I weigh against that the fact that the appeal was allowed for the sake of the appellant’s family, and particularly his two small children, by a judge who took into account that the offences giving rise to the deportation order were committed more than ten years ago. Regrettably the claimant has not been absolutely out of trouble since then but his two subsequent convictions were dealt with by way of fines.
13. I am satisfied that the Secretary of State has not shown proper reasons for extending time. I do not extend time. It follows that the Secretary of State does not have permission to appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 28 October 2014



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