



**Upper Tribunal  
(Immigration and Asylum Chamber)  
Number: IA/37748/2013**

**Appeal**

**IA/15862/2012**

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
On 3 December 2014**

**Determination Promulgated  
On 5 December 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**OLAKUNBI AKINDURO**

Respondent

**Representation:**

For the appellant: Mr M Shilliday, Home Office Presenting Officer  
For the respondent: Mr P Saini, instructed by Wilsons Solicitors

**DETERMINATION AND REASONS**

1. Whilst this is an appeal by the Secretary of State for the Home Department, for convenience I will refer to the parties in the determination as they appeared before the First-tier Tribunal.

2. The appellant is a national of Nigeria who first came to the UK in 1973 and has left and re-entered the UK on a number of occasions since

then the most entry recent being on 8 October 2011 with leave to enter as a multi-entry visitor until 8 April 2012. The background to this matter is as follows:

- On 2 December 2011 the appellant applied for leave to remain in the UK on compassionate grounds under Article 8 of the European Convention on Human Rights;
- The respondent refused that application on 20 June 2012 and in the same decision notified the appellant of the decision to remove her under section 47 of the Immigration, Asylum and Nationality Act 2006 (the first decision);
- The appellant appealed against that decision- that appeal was allocated appeal number IA/15862/2012;
- The appellant's appeal against that decision was allowed by First-tier Tribunal Judge Shepherd in a determination promulgated on 19 September 2012 to the limited extent that it was not in accordance with the law as the section 47 decision was made alongside the refusal of leave to remain. First-tier Tribunal Judge Shepherd did not deal with the substantive appeal under Article 8;
- The respondent was granted permission to appeal to the Upper Tribunal. In a determination promulgated on 5 December 2012 Upper Tribunal Judge King decided that First-tier Tribunal Judge Shepherd erred in failing to fully consider the substantive merits of the appeal and remitted the appeal back to the First-tier Tribunal for a de novo hearing for the merits of the appeal to be fully and properly considered;
- It appears that instead of the appeal being remitted to the First-tier Tribunal the respondent made a fresh decision on 29 August 2013 refusing the application made on 2 December 2011 (the second decision);
- The appellant appealed against that decision (the current appeal number IA/37748/2013);
- In a determination promulgated on 27 August 2014 First-tier Tribunal Judge Oakley found that the second decision made by the respondent was not in accordance with the law because it implicitly withdrew the first decision and because the second decision relied on the 'new' Rules despite the application having been made prior to July 2012;
- The respondent applied for permission to appeal to the Upper Tribunal against that decision on the grounds that the Judge erred in deciding that the new Rules did not apply to this case.

Permission was granted on the basis that this ground was arguable.

3. At the hearing before me the parties agreed that it was apparent from the above chronology that the appeal had not been remitted to the First-tier Tribunal in accordance with Upper Tribunal Judge King's decision of 5 December 2012. They suggested that it should again be remitted to the First-tier Tribunal.

#### Error of Law

4. First-tier Tribunal Judge Oakley set out much of the history above and was therefore aware of the circumstances in which the appeal came before him [3-4]. However he did not appreciate that the de novo hearing directed by Upper Tribunal Judge King had not taken place. Also, First-tier Tribunal Judge Oakley found that the respondent's second decision implicitly withdrew the first. I do not accept that this was the correct approach. In my view the first decision still stands. Mr Shilliday submitted that the respondent can always issue a supplementary decision. I accept that the respondent could perhaps issue supplementary reasons but the relevant decision under appeal in this case must still be the first decision, it having been issued in response to the application made in 2011 and it still awaiting determination by the First-tier Tribunal.

5. In these circumstances I am satisfied that the two appeals should be linked and the matter should be remitted to the First-tier Tribunal for a de novo hearing in accordance with the decision of Upper Tribunal Judge King.

6. The issue as to whether the Rules introduced in July 2012 apply to the decision given the date of application will have to be determined by the First-tier Tribunal Judge at the time of the remitted hearing.

#### Decision

The Judge made an error on a point of law and the determination of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal to be remade.

Signed  
December 2014

Date: 4

A Grimes  
**Deputy Upper Tribunal Judge**

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