



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

Appeal Number: DA/00477/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 01 December 2015**

**Decision & Reasons Promulgated
On 15 December 2015**

Before

**The President, The Hon. Mr Justice McCloskey
Upper Tribunal Judge Bruce**

Between

VLADYMYR BUCHAK

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representative

For the Respondent: Mr Peter Dellar, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, Mr Buchak appeals with permission against the decision of the First-tier Tribunal ("FtT") promulgated on the 7 October 2014. By its decision the FtT dismissed the appeal against what is described as the making of a deportation order.
2. In our judgment the decision of the FtT suffers from two incurable and fundamental errors of law. The first is the failure to consider the appeal properly under the EEA regulations and to make findings and conclusions accordingly. The second is the unfairness of the procedure adopted by the FtT. This latter issue is addressed in paragraph 5 of the determination. It

is clear from this part of the determination that the judge fundamentally misdirected himself in law. The criterion which he applied to the Appellant's late arrival at the Tribunal building was whether a satisfactory explanation for the tardiness could be provided. This is fundamentally flawed in law. As the decision of this Tribunal in the case of Nwaigwe makes abundantly clear the criterion is that of fair hearing and the test which the Judge had to apply at that stage, given that the interpreter has been prematurely and precipitously released from the premises was whether the Appellant, should, in fulfilment of his inalienable right to a fair hearing be granted an adjournment. An adjournment was the only feasible option whereby he could be given a fair hearing given the absence of an interpreter.

3. The judge did not even consider the option of an adjournment. The determination contains the following conclusion:

"I was satisfied that the appeal could be justly determined without a hearing in all the circumstances".

This conclusion is unsustainable in law by virtue of its infringement of the Appellant's right to a fair hearing. It is also unreasoned and unparticularised and duly analysed attracts the rather exceptional and unusual appellation of irrational. For this combination of reasons the decision of the FtT is unsustainable in law.

4. Our decision is to set aside the decision of the lower Tribunal. The appeal to this Tribunal succeeds to that extent. We shall remit the appeal to a differently formed lower Tribunal. This means that there will have to be a further hearing by the lower Tribunal. Mr Buchak would be very well advised to obtain legal representation if at all possible. He should actively investigate all options on that issue.

Seamus McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Date: 04 December 2015