



IAC-AH-KEW-V1

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

Appeal Number: DA/01176/2014

**THE IMMIGRATION ACTS**

**Heard at Birmingham**

**Decision and Reasons  
Promulgated**

**On 9<sup>th</sup> October 2015**

**On 26<sup>th</sup> October 2015**

**Before**

**UPPER TRIBUNAL JUDGE HEMINGWAY**

**Between**

**MS ESTHER FARAJA NGWATA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Karnik

For the Respondent: Mr Mills, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant has appealed, with permission, to the Upper Tribunal against a decision of the First-tier Tribunal (Judge Chohan and Mrs R M Bray JP) dismissing her appeal against the Respondent's decision of 2<sup>nd</sup> May 2013 to make a deportation order in respect of her.
2. The Appellant's appeal was heard by the First-tier Tribunal on 11<sup>th</sup> February 2015. She attended without representation though she had previously been represented by solicitors. She indicated, although not

initially, that she required an interpreter. The First-tier Tribunal did not adjourn either to give her further time to obtain new legal representation or to arrange for an interpreter. It is noted that after the Appellant had been informed that there would be no adjournment she “refused to answer any questions and simply put her head down and sobbed.”

3. There was an application for permission to appeal to the Upper Tribunal. Five distinct grounds were advanced and although permission was initially refused it was eventually granted by Upper Tribunal Judge Taylor on 8<sup>th</sup> July 2015 on the basis that:

“It is arguable that the judge did not act fairly in refusing the Appellant an interpreter. If this ground is made out the appeal will have to be reheard before a different constituted Tribunal.”
4. Permission having been granted the matter was listed for a hearing before the Upper Tribunal limited to a consideration as to whether the determination of the First-tier Tribunal should be set aside for legal error.
5. In fact, there is not really very much more to say. This is because Mr Mills, on behalf of the Respondent, very fairly and, in my view, entirely properly, accepted that the decision of the First-tier Tribunal had to be set aside. He observed that, following the decision in **Nwaigwe [2014] UKUT 418 (IAC)** the threshold for the determination of unfairness in proceedings had been set “fairly low.”
6. There is, it seems to me, in view of the approach taken by Mr Mills, little point in my adding very much more. This was, though, it is important to note, an appeal which was by no means free from complexity. Further, it was a matter of considerable importance to the parties. The Appellant was facing deportation. She had served a quite lengthy custodial prison sentence albeit one which had been reduced, on appeal, by the Court of Appeal. She had claimed to be at risk upon return to her home country but her asylum claim had been certified by the Respondent under Section 72(2) of the Nationality, Immigration and Asylum Act 2002. There was a suggestion, albeit seemingly not very much evidence of it, that there were ongoing family proceedings within the UK which might have had relevance. Against that background, it was clearly important that the Appellant was able to fully participate in the proceedings.
7. The First-tier Tribunal was clearly satisfied that she had not told the truth with respect to how she came to lack legal representation and had not told the truth regarding her claimed limitations in the use of the English language. However, there was some reason to suppose that she might have some difficulties with English given that it appears not to be her first language (she comes from the Democratic Republic of Congo), that she had only been in the UK since 2010 and that at an asylum interview conducted by the Respondent on 5<sup>th</sup> February 2013, she had had the services of a Swahili speaking interpreter.

8. I note Mr Mills' very fair and appropriate view and I conclude that, in these circumstances, the First-tier Tribunal did err in failing to adjourn the proceedings so that the Appellant could have the benefit of an interpreter which would have enabled her to fully participate in the proceedings. Whilst she did appear to have some command of English it could not simply have been assumed that whatever command she did have would have been sufficient for her to have understood questions put to her and to have effectively represented herself in proceedings of such gravity and complexity. Accordingly, I conclude that the First-tier Tribunal's determination did involve an error of law and that that determination falls to be set aside.
9. There was then some further discussion as to how matters might proceed. Both representatives considered it was appropriate to remit this appeal to the First-tier Tribunal so that matters could be considered entirely afresh in that forum. Where there has been procedural unfairness such as to render a determination unreliable that does seem to me to be, ordinarily, the proper course of action. It also seems to me that, subject to a finding of actual legal error, that was the course of action anticipated by Upper Tribunal Judge Taylor. I have decided, therefore, to remit with appropriate directions for the determination of this appeal by the First-tier Tribunal.

### **Notice of Decision**

The decision of the First-tier Tribunal involved an error of law and is set aside.

The appeal is remitted to the First-tier Tribunal so that the decision may be re-made.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Hemingway

### **TO THE RESPONDENT** **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Upper Tribunal Judge Hemingway