



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

Appeal Number: IA/19094/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 11th September 2015**

**Decision & Reasons Promulgated
On 16th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**Mr Tolulope Opeyemi Toluwade
(NO ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Mr Tolulope Opeyemi Toluwade date of birth 31st December 1980 is a citizen of Nigeria. Having considered all the circumstances I do not make an anonymity direction.
2. This is an appeal by the appellant against the determination of First-tier Tribunal Judge Cox promulgated on 12th March 2015, whereby the judge dismissed the appellant's appeal against the decisions of the respondent dated 8th April 2014. The decisions by the respondent were to refuse the appellant further leave to remain in the United Kingdom and thereupon to remove the appellant from the United Kingdom.

3. By decision made on the 12th May 2015 leave to appeal to the Upper Tribunal was granted. Thus the matter appears before me to determine in the first instance whether or not there is an error of law in the original determination.
4. On 2 October 2012 the appellant had been granted leave to enter the United Kingdom as a Tier 4 (General) Student Migrant. The appellant's leave was valid until 29 February 2014.
5. On the 26th February 2014 the appellant made application for further leave to remain in the United Kingdom outside the Immigration Rules on the grounds of Rights under the ECHR specifically Article 3 and Article 8 Family and Private Life.
6. The grounds for that claim are set out in the letter from his legal representative and in a brief unsigned statement. The documents referred to a number of matters including:-
 - a) The appellant had gone to university and was shocked to discover the amount of unchecked immoral and cultist activities on campus. He therefore began to campaign and promote Christian faith. He claims that war was declared upon him. No details are given as to what exactly this war was. The appellant otherwise claims that he had sought to obtain police reports but had failed to get any reports. No details are given as to what declaring war had entailed. No specific details are given.
 - b) The appellant otherwise claims that he has come to the United Kingdom and that he feels safe in a lawful environment. In the letter from the representatives there is reference to family life but there is no evidence that the appellant is married, has any children or is in a serious relationship or has any family in the UK.
 - c) By comparison the letter from the legal representatives indicates that the appellant is seeking to rely upon appendix FM and paragraph 276 ADE but then concedes that the appellant cannot meet the requirements of the rules in respect thereof. The letter then seeks to rely upon Article 8 private life. The letter refers to the fact that the appellant came as a student and that his current leave has expired. He claims to be working and to be involved in a local Christian Church. No other aspect of Article 8 Private Life have been raised
 - d) That is the extent of the assertions made to support a claim under Article 8.
 - e) It is accepted that Njomane Immigration Law Practice were appointed to act as representatives on behalf of the appellant. They were the authors of the letter.

7. Initially the case was listed for hearing on 22 September 2014. Three days before the hearing the case was taken out to be relisted. Notice of that was sent out on 19 September 2014 to the appellant and his representatives. I would note that despite the fact that the hearing was only three days away no evidence had been submitted to substantiate any part of the appellant's case. No statements or documentary evidence or other supporting evidence had been submitted to the Tribunal or to the Home Office.
8. On 22 September Notice of the new hearing date was sent out. I note within paragraph 6 of the decision by Judge Cox it is noted at the date of the hearing there was no attendance by the appellant or anyone appearing on his behalf. The clerk to the Tribunal had attempted to contact the legal representatives but that had been unsuccessful. Judge Cox noted that notice of hearing been sent out in accordance with the Procedure Rules.
9. Judge Cox determined that notice of hearing had been sent out in accordance with the Procedure Rules and therefore it was just and proper to proceed with the hearing in the absence of the appellant. Having determined to proceed with the hearing Judge Cox then noted that the appellant had failed to provide any evidence to substantiate any part of his claim. There was no signed statement. There was no documentary evidence to support the appellant's claims. There was no evidence of involvement with a local church or any other aspect of the appellant's private life.
10. In the circumstances the judge determined to dismiss the appellant's appeal on all grounds.
11. By letter sent to the Tribunal the appellant appealed against the judge's decision. With regard to his non-attendance at the hearing the appellant claims that he did not receive notice of hearing. He has asserted otherwise that his representatives did not receive the notice of hearing nor did they inform him of the hearing if they did receive notice of hearing. There is no evidence from the representatives.
12. From the file papers on the correspondence section it is clear that notice of hearing was sent out on 22 September 2014. That notice of hearing was the sent the appellant's representatives.
13. The appellant was asked when last he had been in touch with his representatives and indicated that it was in September 2014. However when being questioned further about his receipt of the judge's decision and the dismissal of his claim the appellant then stated that he had been in touch with his representatives in March 2015. He then claimed to have dismissed his solicitors but could not state on what day he had dispensed with their services. He accepted however that he had never informed the Tribunal or the Home Office of such.

14. When asked why no evidence had been lodged for the first hearing, he could give no valid reason why no evidence or statement had been submitted prior to the original hearing of 22 September 2014. The Notice of Hearing, dated 14th May 2014, had directed that statements and other evidence had to be lodged and served within three weeks of the Notice. No evidence had been lodged.
15. When asked to explain his circumstances in the UK, the appellant indicated that he had wanted to study a PhD but had not had sufficient funds. He had therefore lodged this application. He could give no valid explanation why, when he was seeking to assert that he was being mistreated and harmed because of his religious beliefs, he had not sought to claim asylum. The only place that the appellant had sought to suggest where “war” was being waged against him was at University in Nigeria. However the appellant had now completed his university courses and would not be returning to university in Nigeria. The appellant had failed to lodge any evidence in support of his claim. In any event the appellant had failed to show that he would be at risk anywhere other than at university or that there would be any continuing interest in him.
16. The basis of the appellant’s claim to set aside the judge's decision is that he did not receive the notice of hearing. However Notice of Hearing had been sent out to his legal representatives. There was no evidence that the representatives did not receive that notice of hearing and in accordance with Rule 12 (4) that was valid service upon the appellant.
17. In the circumstances the judge was entitled to proceed with the hearing in the absence of the appellant. The judge was entitled, on the basis that no evidence had been lodged to substantiate the appellant’s claims, to dismiss the appellant’s claims and dismiss the appeal.
18. There is a no material error of law in the determination. I uphold the decision to dismiss this appeal on all grounds.

Signed

Date

Deputy Upper Tribunal Judge McClure