



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/49744/2014

THE IMMIGRATION ACTS

Heard at Field House
On 28 August 2015

Determination Promulgated
On 2 September 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Philomena Oghogho Oghenovo
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr I Ikeh, instructed by Moorehouse Solicitors
For the respondent: Ms A Weller, Senior Home Office Presenting Officer

ERROR OF LAW DECISION AND REASONS

1. The appellant, Philomena Oghogho Oghenovo, date of birth 6.3.86, is a citizen of Nigeria.
2. This is her appeal against the determination of First-tier Tribunal Judge Tully promulgated 17.3.15, dismissing her appeal against the decision of the Secretary of State to refuse to issue an EEA Residence Card as confirmation of a right to reside in the UK as the family member of an EEA national exercising Treaty rights in the UK, pursuant to the Immigration (EEA) Regulations 2006. The Judge decided the appeal

on the papers at the request of the appellant, on 17.3.15, and the decision was promulgated the same day.

3. First-tier Tribunal Judge Grant-Hutchison granted permission to appeal on 11.5.15.
4. Thus the matter came before me on 28.8.15 as an appeal in the Upper Tribunal.

Error of Law

5. For the reasons set out herein I find that there was no error of law in the making of the decision of the First-tier Tribunal such as to require the decision of Judge Tully to be set aside.
6. Permission to appeal to the Upper Tribunal was granted on the basis that the appellant's representative had sent a letter to the Tribunal, dated 13.3.15, requesting that the appeal be decided by way of oral hearing, rather than on the papers as had been requested in the Notice of Appeal and consistent with the £80 fee paid, as opposed to the £140 fee for an oral hearing. Judge Grant-Hutchison stated, "The grounds submit that there is no consideration of the letter before the judge reached her decision on the papers on 17 March 2015. It is an arguable error of law that had the appellant been able to attend, the evidence may have made a material difference to the outcome or to the fairness of the proceedings."
7. However, there is no evidence that the letter dated 13.3.15 was received by the Tribunal before the decision was made. Consistent with the request in the Notice of Appeal to the First-tier Tribunal the appeal was allocated for a decision on the papers and was both decided and promulgated on 17.3.15.
8. Mr Ikeh stated that in the circumstances of such a request the Tribunal would send out a request for the balance of the fee for an oral hearing. No such request was sent and Mr Ikeh confirms none was received by the appellant's solicitors. The case file before me does not show that any copy of this letter of 13.3.15 was received until the fax of 21.3.15 comprising the application to the First-tier Tribunal for permission to appeal to the Upper Tribunal. The fax was sent after 10:00pm on 21.3.15 and stamped as received by the Tribunal on 23.3.15. I put the hearing back in the list for a short period to allow Mr Ikeh to see if he could produce any evidence to prove that the letter was sent by fax and that it would have been received by the Tribunal before the decision dismissing the appeal was made by Judge Tully on 17.3.15. No such evidence was produced. I cannot accept Mr Ikeh's submissions that the letter "would have been sent by fax," without some concrete evidence. That no such fax was received and no such letter received until the fax of 21.3.15 is entirely consistent with the documents in the case file before me.
9. In the circumstances, the appellant has failed to demonstrate that any such request for an oral hearing was received by the Tribunal prior to the making and promulgation of the decision. It follows that there is no procedural unfairness in the decision of the First-tier Tribunal and thus no error of law.

Conclusions:

10. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.



Signed
Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal to the Upper Tribunal has been dismissed.



Signed
Deputy Upper Tribunal Judge Pickup

Dated