



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

Appeal Number: IA/46827/2014

**THE IMMIGRATION ACTS**

**Heard at Cardiff  
on 24 May 2016**

**Decision & Reasons  
Promulgation  
on 27 May 2016**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

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

Appellant

**and**

**K O**

Respondent

For the Appellant: Mr I Richards, Senior Home Office Presenting Officer  
For the Respondent: Mr A Miah, instructed by M A Consultants (London)

**DECISION AND REASONS**

1. The parties are as described above, but the rest of this decision refers to them as they were in the First-tier Tribunal.
2. The appellant is a citizen of Nigeria, born on [ ] 1974. An anonymity order was made in the First-tier Tribunal. The matter was not addressed in the Upper Tribunal, so that order remains in force.
3. On 11 November 2014 the SSHD refused the appellant further leave to remain on the basis of his family and private life in the UK.
4. First-tier Tribunal Judge Kirvan allowed the appellant's consequent appeal by decision promulgated on 11 March 2015.
5. The SSHD appeals to the Upper Tribunal on the grounds that despite objection the judge permitted the appellant's representative to extract

evidence from the appellant and witnesses by way of leading questions, “a procedural irregularity capable of making a difference to the fairness of the hearing and its outcome.”

6. To accompany the assertion in the grounds, the SSHD produced a copy of a minute by the Presenting Officer who appeared in the First-tier Tribunal, prepared the day after the hearing. Mr Richards submitted that the matter would then have been fresh in the Presenting Officer’s mind.
7. The Secretary of State filed nothing further in support of the grounds. No request was made to the First-tier Tribunal or to the Upper Tribunal for a copy or a transcript of the judge’s record of proceedings, or for a response from the judge to the allegation made.
8. The minute is quite brief, and rather vague. Its most particular suggestion is that the appellant was to change his evidence about a date from December to February. However, the precise questions put and answers extracted are not recorded. It is not clear whether there was timeous objection. The minute records the matter under the heading of submissions.
9. It might well be relevant to submit that evidence had been elicited by leading questions, being a matter going to the weight properly to be given to that evidence, but any objection needs to be taken when the question is put.
10. In advance of the hearing I identified the judge’s handwritten record, which is quite lengthy, on the file. It is reasonably if not 100% legible. It shows (as would normally be expected) relatively short questions and longer answers throughout the oral evidence. I advised the parties that while I had not perused every line of the record line by line, I had seen no note of an objection or ruling.
11. If there had been one or more objections in the course of the oral evidence, that ought to have been reflected both on the record and in the decision.
12. I did not call on Mr Miah to reply to the submissions on behalf of the SSHD.
13. The SSHD asserts that the judge perpetrated a procedural irregularity amounting to a material error of law. There are obvious steps, which I have mentioned above, which might have been taken with a view to discharging the onus on the SSHD to the required standard, the balance of probability. I accept that the minute by the Presenting Officer is an adminicle of evidence tending to support the grounds. There is no reason to doubt that the minute is anything but honestly and conscientiously prepared. However, it does not go very far to make the SSHD’s case. It fails to record the precise questions to which objection was taken, the stage at which objections were made, the submissions thereon, or the judge’s ruling (except that “it was ok”).

14. In my view, the SSHD has failed to establish to the necessary standard that there was any procedural irregularity, and has fallen still further short of showing that it might have been of such nature as to amount to material error of law.
15. I record that the shortcomings in the SSHD's case were not any responsibility of Mr Richards, from whom I ascertained that he had seen the file only the day before the hearing (in accordance with what I understand to be the SSHD's regular practice).
16. If the SSHD were to have made anything of such grounds of appeal, the necessary steps should have been taken very much earlier in the proceedings (beginning when the application for permission was made).
17. The SSHD's appeal to the Upper Tribunal is dismissed. The decision of the First-tier Tribunal, allowing the appellant to appeal, shall stand.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

25 May 2016  
Upper Tribunal Judge Macleman