



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

Appeal Numbers: HU/13582/2016
HU/13585/2016
HU/13588/2016
HU/13593/2016

THE IMMIGRATION ACTS

Heard at Manchester

On 5 October 2018

**Decision & Reasons
Promulgated
On 31 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

OPEOLUWA [A]

[F A¹]

OLABISI [A]

[F A²]

(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms K Smith, Counsel, instructed by Kesar & Co Solicitors
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

ORDER

UPON hearing from Ms Smith of Counsel for the Appellants and from Mr Tan, Senior Home Office Presenting Officer for the Respondent;

AND UPON considering the decision of Judge of the First-tier Tribunal Fletcher-Hill dated 27 November 2017 dismissing the Appellant's appeals against the decision of the Respondent dated 18 May 2016 refusing their human rights claims; the Appellants' grounds of appeal dated 11 December 2017; and the grant of permission to appeal dated 1 May 2018;

AND UPON it being agreed between the parties that the judge materially erred in law in failing to adjourn the hearing, it being unfair, as per Nwaigwe (adjournment: fairness) [2014] UKUT 418 (IAC) for the hearing not to be adjourned, in particular on the basis that Notre Dame Refugee Centre had withdrawn representation only on 4 October 2017, 9 days before the hearing of 13 October 2017, stating that they were 'no longer representing the Appellant', and thereby using language consistent with the first Appellant having formed the long standing impression that they had previously been representing him;

AND UPON the Tribunal being satisfied that it is appropriate to make such an order;

IT IS HEREBY ORDERED, by consent, under Rule 39 Tribunal Procedure (Upper Tribunal) Rules 2008 **THAT**:

1. The decision of the judge is set aside.
2. The appeal is remitted to the First-tier Tribunal for rehearing.

No anonymity direction is made.

1POST SCRIPT

- 1 After the making of the above order in open court at the Manchester Civil Justice Centre on 5 October 2018, but before the promulgation of the order, the Respondent has, on 16 October 2018, written a letter addressed to the First Appellant in person, at his home address, informing him that "I am writing to inform you that having reviewed the decision on your (and your dependents) application(s) on behalf of the Secretary of State I have decided to withdraw the decision of 18 May 2016 (recently appealed to the Upper Tribunal). You will be notified of the new decision in due course. The reason for withdrawing the decision is the length of residence of your eldest child."
- 2 That letter was copied by fax to the Manchester IAC. A fax cover letter which stated "Please see attached letter to the appellant indicating that

the decision of 18 May 2016 (recently remitted back from the Upper Tribunal) has been withdrawn.” That fax in turn then appears to have been forwarded to Field House, scanned and emailed to me.

3 The question arises then as to what to do about the Respondent’s notification that the decision of 18 May 2016 has been withdrawn.

4 Rule 17 of the Tribunal Procedure (Upper Tribunal) Rules 2008 provides that:

“17.—(1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it—

- (a) by sending or delivering to the Upper Tribunal a written notice of withdrawal; or
- (b) orally at a hearing.

(2) Notice of withdrawal will not take effect unless the Upper Tribunal consents to the withdrawal except in relation to an application for permission to appeal.

5 Alternatively, Rule 17 of The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 provides:

“Withdrawal 17.—

(1) A party may give notice of the withdrawal of their appeal—

- (a) by providing to the Tribunal a written notice of withdrawal of the appeal; or
- (b) orally at a hearing,

and in either case must specify the reasons for that withdrawal.

(2) The Tribunal must (save for good reason) treat an appeal as withdrawn if the respondent notifies the Tribunal and each other party that the decision (or, where the appeal relates to more than one decision, all of the decisions) to which the appeal relates has been withdrawn and specifies the reasons for the withdrawal of the decision.

(3) The Tribunal must notify each party in writing that a withdrawal has taken effect under this rule and that the proceedings are no longer regarded by the Tribunal as pending.”

6 Although arguably until my order, above, remitting the appeal to the First tier Tribunal has been promulgated to the parties, the appeal remains extant before the Upper Tribunal.

7 However, I do not treat the Respondent’s letter of 16 October 2018 as a notice of withdrawal of its case before the Upper Tribunal, for the following reasons:

(i) no notice of withdrawal of its case has been sent or delivered by the Respondent to the Upper Tribunal; rather, a letter to the appellant has

been copied to the First tier, and the Respondent clearly believed from the terms of the fax cover letter sent to Manchester IAC that it was corresponding with the First tier;

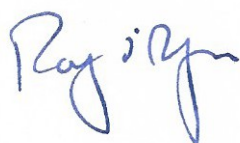
(ii) no notice of withdrawal of the Respondent's case was given orally at the hearing before me on 5 October 2018; rather, the Respondent, indicating its acceptance that the Judge's decision was unsustainable by reason of an error of law, agreed to my proposal that the matter be dealt with by an Order under Rule 39 of the 2008 Rules;

(iii) this Upper Tribunal treating the Respondent's case as withdrawn, would risk it being unclear what the respective parties' positions were in the present appeal before the Upper Tribunal;

(iv) the First tier is able to make an appropriate case management decision of its own in the light of the Respondent's decision to withdraw the decision of 18 May 2016.

Signed

Date 25.10.18

A handwritten signature in blue ink, appearing to read 'P. O'Ryan', written in a cursive style.

Deputy Upper Tribunal Judge O'Ryan