



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

Appeal Number: IA/34548/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 March 2018**

**Decision Promulgated  
On 9 March 2018**

**Before**

**Deputy Upper Tribunal Judge Pickup**

**Between**

**Secretary of State for the Home Department**

Appellant

**And**

**Anthony Chijioke Akunne  
[No anonymity direction made]**

Claimant

**Representation:**

For the claimant: Mr N Garrod, instructed by Obadiah Rose Solicitors  
For the appellant: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the Secretary of State' appeal against the decision of First-tier Tribunal Judge Greasley promulgated 27.6.17, allowing on human rights grounds the claimant's appeal against the decision of the Secretary of State, dated 12.11.15, to refuse his application for LTR in the UK on private and family life grounds.
2. First-tier Tribunal Judge Pooler granted permission to appeal on 18.12.17.

3. Thus the matter came before me on 7.3.18 as an appeal in the Upper Tribunal.

#### *Error of Law*

4. For the reasons summarised below, I found such error of law in the making of the decision of the First-tier Tribunal as to require the decision to be set aside and remade in the First-tier Tribunal.
5. The grounds first assert that the judge erred in law by making a material misdirection by failing to properly apply s117B of the 2002 Act. In particular, it is asserted that the judge allowed the appeal on the basis set out at [26] of English language ability and what is assumed to be a typo for financial independence. Following AM (s117B) Malawi [2015] UKUT 0260, an appellant can gain no credit for either factor.
6. Both the Rule 24 response and Mr Garro in his submissions appear to misunderstand the nature of the specific complaint in relation to s117B. It is not that s117B was not considered or taken into account, but rather that impermissible credit was given for factors that are at best neutral. The way in which [26] is worded indicate that the judge gave credit for these factors in the public interest considerations.
7. The judge mistyped, or failed to check the dictation of, the second sentence of [26] but it is clear that the judge intended to state: "Both of these two aspects suggest that the public interest considerations *weigh in* the appellant's favour as he is someone who can be deemed to better integrate into the UK society generally." Instead of 'weigh in,' the judge put "weighing," which makes no grammatical sense. To state that these two factors, being able to speak English and to be financially independent (in relation to which there was another typo: "financially dependent"), is to make an error of law; those factors do not weigh in the appellant's favour at all. It was on that basis that Judge Pooler granted permission to appeal.
8. The second ground, is that the judge failed to have regard to the overarching public interest and failed to explain why 120 days was an unreasonable period for the processing of a visa application and be a disproportionate interference with family life.
9. I find that the decision is devoid of any adequate proportionality balancing exercise between on the one hand the properly assessed public interest and on the other the rights of the appellant and his family. No weight was given to the failure to comply with Immigration Rules. The only public interest factor referred to was that in maintaining immigration control. At [25] the judge found that immigration control did not necessitate the refusal of the application but failed to give any reasoning for that conclusion. There is no adequate assessment to explain why the family life needed to be enjoyed in the UK at all. Neither the appellant nor any member of his family is a British citizen. His wife did not have settled status. There was no assessment as to why family life could not be

enjoyed in Nigeria, or whether there were insurmountable obstacles to enjoying family life outside the UK, factors that would be relevant to an adequate proportionality balancing exercise.

10. In all the circumstances, I find that the decision was flawed and in obvious error of law.

*Remittal*

11. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. The errors of the First-tier Tribunal Judge vitiate the findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal.
12. In all the circumstances, at the invitation and request of both parties to relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. The effect of the error has been to deprive the Secretary of State of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

*Conclusion & Decision*

13. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal.

**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**

Deputy Upper Tribunal Judge Pickup

*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 13(1) of the Tribunal Procedure Rules 2014. 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 pursuant to 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 outcome of the appeal remains to be decided.

**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**