



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

Appeal Number: HU/06471/2018

THE IMMIGRATION ACTS

**Heard at Glasgow
On 1 February 2019**

**Decision & Reasons
Promulgated
On 19 February 2019**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

**JAMES TOLU SOLOMON
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr W Olabamiji, Solicitor

For the Respondent: Mr M Matthews, Senior Presenting Officer

DECISION AND REASONS

1. The appellant, who is a national of Nigeria, born 20 February 1976, has been granted permission to appeal against the decision of First-tier Tribunal Judge David Clapham, who for reasons given in his decision dated 19 September 2018 dismissed the appeal against the Secretary of State's decision refusing the appellant's application for indefinite leave to remain

in the United Kingdom on the basis of ten years' continuous and lawful residence based on his private life.

2. The First-tier Tribunal Judge proceeded in the absence of the appellant who had notified the Tribunal that he would be unable to attend because he had hay fever. The judge concluded that he did not consider this to be a matter that justified an adjournment and dismissed the appeal essentially on the basis that the appellant had not demonstrated that he met the requirements of the relevant Immigration Rule.
3. Permission to appeal was granted by First-tier Tribunal Judge E Simpson having decided that despite the application having been lodged nearly five weeks late to extend time. The challenge was made on the appellant's behalf by his solicitors who in addition to the application produced an affidavit in support by the appellant identifying error by the First-tier Tribunal in proceeding despite the appellant's inability to attend and furthermore the appellant had been denied the opportunity of preparing adequately for the hearing due to late service of the respondent's bundles.
4. By way of background, although it is disputed, the appellant's case is that he entered the United Kingdom in June 2012 on a twelve month visitor visa. It is not disputed however that he successfully applied for an EEA residence card on 13 February 2004 based on his marriage to a Portuguese national on 30 October 2003. He applied for a further residence card on 30 March 2011 and again was successful. He separated from his wife in March 2015. He applied for a further residence card on 18 July 2016 but was unsuccessful and withdrew his appeal against this decision prior to hearing. His most recent application for indefinite leave to remain was made on 6 November 2017.
5. At the outset of the hearing, Mr Matthews explained that the respondent's bundle had not been produced until 27 June 2018 and he further accepted that the appellant could not have possibly received the bundle in compliance with directions. The bundle had been sent either on 27 or 28 June, the latter being the date of hearing. In those circumstances he explained that it was not difficult to see that it was unfair in all the circumstances for the judge to have proceeded.
6. Not surprisingly Mr Olabamiji did not pursue the first ground. He was correct to take this course. There was no medical evidence provided to the judge to indicate that the appellant's condition for which he was self-medicating affected his mobility to the extent that he was unable to attend or that the condition undermined his health to the extent that he was unable to present his case.
7. Both representatives indicated the appropriate course in the absence of a fair hearing would be for the case to be remitted to the First-tier Tribunal. I am satisfied they were correct to make this submission particularly in the light of the relatively complex nature of the appellant's immigration history which will require detailed findings of fact and furthermore, it

having been accepted that the appellant had been denied a fair hearing before the First-tier Tribunal due to a failure by the Secretary of State to serve the bundle in good time.

8. It is a matter of concern that the conceded error was not addressed in a rule 24 response which could have resulted in the appeal being disposed of without a hearing. The appeal is allowed and the matter remitted to a differently constituted First-tier Tribunal.

No anonymity direction is made.

Signed

Date 14 February 2019

UTJ Dawson
Upper Tribunal Judge Dawson