



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-003632**  
**First-tier Tribunal No:**  
**EA/15176/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 18 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE BLUNDELL**

**Between**

**ADEFUNKE AISHAT ADERINOLA**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER (LIVERPOOL)**

Respondent

**Representation:**

For the Appellant: Mr Okonu, legal representative of Samuel Louis Solicitors  
For the Respondent: Mr Whitwell, Senior Presenting Officer

**Heard at Field House on 17 May 2023**

**DECISION AND REASONS**

1. The outcome of this appeal was agreed by the parties and this decision is in correspondingly short form.
2. The appellant is a Nigerian national who was refused a Family Permit under Appendix EU (Family Permit) of the Immigration Rules. She appealed to the First-tier Tribunal against that decision and her appeal was dismissed by Judge C H Bennett in a characteristically thorough decision.
3. There is a single ground of appeal, which is that Judge Bennett erred in deciding to proceed with the hearing in the absence of the appellant, the sponsor or any representative. The judge concluded that she had been given notice of the hearing and that it was in the interests of justice to proceed it.

He did so, and found (for reasons which I need not set out) that her marriage to her Spanish national sponsor was one of convenience and, accordingly, that she could not succeed on any of the limited grounds of appeal which were available to her.

4. The appellant maintained in her grounds of appeal that she did not know about the hearing before the First-tier Tribunal. She stated that she had received no notice of hearing and that it was unfair for the judge to proceed in her absence.
5. The sponsor made a witness statement in support of the appellant's appeal to the Upper Tribunal. He said that he had instructed a solicitor named Matthew Goldborough to lodge the appellant's appeal. He stated that he had met him in Stratford to that end and that he had paid him £200, together with the appeal fee of £140. This was in October 2021.
6. The respondent then sent the sponsor an email, in March 2022, asking whether the bundle for the appeal could be served on him. He did not take prompt action in response to that email and it was only on 24 March 2022 that he made a telephone call to the First-tier Tribunal. He was told that the appeal had proceeded on 18 March 2022 and that it had been dismissed. He made contact with Mr Goldborough, who said initially that he had not received any decision from the First-tier Tribunal but later suggested that it had been directed to his junk email folder. So it was that the appeal to the Upper Tribunal was commenced, with Samuel Louis Solicitors instructed to act for the appellant, in replacement for Mr Goldborough.
7. I considered what was said by the sponsor with Mr Okonu's assistance. It was clear that form IAFT-6, which is the notice of appeal to the First-tier Tribunal, gave an email address for the appellant which began 'mattgb55'. There was also an email address for the sponsor, which began 'jamtash21'. Whoever had completed the IAFT-6 had not completed the Section 5 (Representative Details), however.
8. I queried with Mr Okonu why there was no statement from Mr Goldborough, confirming that mattgb55 was his email address, and confirming that he had not received a notice of hearing from the First-tier Tribunal. If he was acting as the appellant's solicitor and had been sent the notice of hearing, it seemed to me that it was at least arguably the case that the judge had been entitled to proceed in the absence of the appellant (or a representative) and that he had not been entitled to make any further enquiries, as Mr Okonu had been minded to submit.
9. It was during this exchange with Mr Okonu that Mr Whitwell undertook some research on the Solicitors Regulation Authority website. He asked for an opportunity to speak to Mr Okonu and, having done so, confirmed that he did not seek to oppose the appellant's appeal as a result of what he had discovered.
10. I am grateful to Mr Whitwell for his researches, which have cast a flood of light on this case. The SRA website records that Mr Goldborough was admitted to the Roll on 3 October 2005. He does not currently hold a

practising certificate and is the subject of a pending prosecution, the details of which I need not set out, since the 'allegations are subject to a hearing before the Solicitors Disciplinary Tribunal and are as yet unproven', as is made clear on the website. What is of more significance, however, is that Mr Goldborough's practising certificate was made subject to three conditions on 5 November 2021, shortly after the notice of appeal was submitted to the FtT in this case.

11. By the second of those conditions, Mr Goldborough was only permitted to act as a solicitor when he was an employee and the role had been approved by the SRA. By the second of those conditions, restrictions were imposed on his ability to deal with client or office monies or accounts.
12. These conditions shed light, as I have said, on the allegations made by the sponsor. Without making any findings about Mr Goldborough's conduct in this specific case, I consider Mr Whitwell was correct not to quibble with the thrust of Mr Okonu's argument. The appellant submits that Mr Goldborough took money from the sponsor to 'assist' with this appeal. The appeal form suggests that it was completed by a lawyer. The email address of the lawyer might well be that of Mr Goldborough. If he did complete that form, he chose to insert his email address in the space for the appellant's and he chose not to refer to his own involvement in any other way.
13. As the judge made clear in his decision, the FtT failed to keep any records which showed how the notice of hearing was sent to the appellant. The judge proceeded on the basis that it was probably sent by post, or email, or both. Given that the judge's decision was sent by email and given that the increasing trend in the IAC has been towards electronic service where possible, I think it more likely that the notice of hearing was only sent to the mattgb55 email address, which was at all times under the control of Mr Goldborough.
14. Mr Okonu was initially minded to submit that the FtT had been at fault in failing to send the notice of hearing to the appellant. It is much more likely, however, that the failure in this case was Mr Goldborough's, in failing to notify the appellant of the notice of hearing and in failing to prosecute the appeal in any way. Mr Whitwell's researches therefore revealed the likely problem in this case and that problem is clearly such as to vitiate the judge's decision to proceed in the appellant's absence.
15. I should emphasise that the judge did not err on the evidence which was before him. Mr Whitwell was at first minded to submit that the judge was entitled to conclude that there had been proper service of the notice of hearing and that submission may well have prevailed before me if it had not been for what Mr Whitwell discovered about Mr Goldborough during the hearing.
16. This is a cautionary tale but it is only fair to note that the sponsor had previously had dealings with Mr Goldborough when he worked at a firm which is quite well known in this Tribunal. He knew Mr Goldborough to be a solicitor and was entitled to place his trust in him for that reason. Had he been told by Mr Goldborough that there were significant restrictions on his practice from

November 2021, however, I very much doubt that he would have permitted Mr Goldborough's email address to be the main address for correspondence used by the FtT.

17. In the circumstances, I accede to the submission made by both advocates before me. The judge's decision was vitiated by procedural unfairness (which was not of the judge's making) and it falls to be set aside accordingly. The proper course, given the nature of the error, is for the appeal to be remitted to the First-tier Tribunal de novo, for consideration by a different judge.

**Notice of Decision**

The appellant's appeal is allowed. The decision of the FtT is set aside. The appeal is remitted to the FtT to be heard afresh by a judge other than Judge C H Bennett.

M.J.Blundell

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

18 May 2023