



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

Appeal Numbers: IA/31128/2014
IA/28705/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 29 January 2015**

**Sent
On 6 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**ALBERT UFUOMA AKPOGHOR-SITEBRO
MARIA AKPOGHOR-SITEBRO
(ANONYMITY ORDERS NOT MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Shittu, Legal Representative, Focus Immigration Services

For the Respondent: Ms K Pal, Home Office Presenting Officer

**WITHDRAWAL OF APPEAL
(TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008, RULE 17)**

1. These cases come before me today seeking to challenge the decision of First-tier Tribunal Judge Chamberlain promulgated on 24 October 2014 dismissing the Appellants' appeals against the Respondent's decisions dated 6 December 2013 to refuse variation of leave to remain and to

remove the Appellants pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006.

2. It is unnecessary for me to rehearse the relevant personal immigration histories of the Appellants: these are a matter of record on file.
3. The issue upon which the Appellants have challenged the decision of the First-tier Tribunal is essentially that the First-tier Tribunal proceeded to a determination 'on the papers' in accordance with the request of the Appellants in their Notices of Appeal, but did so prior to the expiry of the deadline for submitting supporting documents. The Appellants complained in their application for permission to appeal to the Upper Tribunal that they had submitted a bundle within the period of the deadline but that it had been returned to them because a decision had already been taken by the First-tier Tribunal in respect of the appeals. Necessarily the ground of challenge pleaded in effect that there had been a breach of natural justice.
4. Permission to appeal was granted in consequence by First-tier Tribunal Judge Davidge on 17 December 2014.
5. Today Mr Shittu, who appears on behalf of the Appellants, indicates that he is instructed to withdraw the appeals. He states that this is for two reasons. The first is that the Appellants wish to make a further application to the Secretary of State and they are not able to do so whilst there are pending appeal proceedings. The second matter, which is more relevant to the substance of the appeal, is that it is now acknowledged that because of the operation of section 85A of the Nationality, Immigration and Asylum Act 2002 any documents that the Appellants might have sought to place reliance upon before the First-tier Tribunal that post-dated the application would be inadmissible bearing in circumstances relating to a 'Points Based System' application. In short, even if the bundle of documents had been before the First-tier Tribunal relevant materials would not have been admissible, and therefore the decision taken in absence of those documents could not have been materially different. This is in effect a recognition that ultimately there is no merit in the appeal.
6. The provisions of rule 17 of the Tribunal Procedure (Upper Tribunal) Rules 2008 require the consent of the Tribunal to a withdrawal of an appeal. In those circumstances I have invited the comments and observations of Ms Pal, who appears on behalf of the Secretary of State today. Ms Pal does not object to the withdrawal.
7. In all of the circumstances I give consent to the application for withdrawal of the appeals before the Upper Tribunal and accordingly the Upper Tribunal takes no further action in respect of these appeals. The effect of that is that the decisions of the First-tier Tribunal Judge dismissing each of the Appellants' appeals stands.

Notice of Decision

8. The appeals to the Upper Tribunal in each of IA/28705/2014 and IA/31128/2014 are withdrawn and the Upper Tribunal takes no further action in the appeals.
9. The decisions of the First-tier Tribunal stand: the appeals remain dismissed.

The above represents a corrected transcript of an ex tempore ruling given at the hearing on 29 January 2015.

Signed

Date: 5 February 2015

Deputy Upper Tribunal Judge I A Lewis