



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

Appeal Number: HU/13324/2015

THE IMMIGRATION ACTS

**Heard at Glasgow
on 1 August 2017**

**Decision and Reasons
Promulgated
on 3 August 2017**

Before

Mr C M G OCKELTON, VICE PRESIDENT & UT JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**A A BUSARI
(Anonymity direction not made)**

Respondent

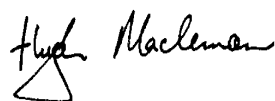
For the Appellant: Mrs M O'Brien, Senior Home Office Presenting Officer
For the Respondent: Mr K Katani, of Katani & Co, Solicitors

DETERMINATION AND REASONS

1. The SSHD appeals against a decision by First-tier Tribunal Judge Farrelly, promulgated on 15 November 2016, allowing Mr Busari's appeal under article 8 of the ECHR.
2. The first ground of appeal to the UT alleges procedural unfairness.
3. The presenting officer in the FtT withdrew, on the basis that his position was compromised by living close to the appellant's address. It was not a question for the FtT, and is not a question for us, whether that was a good enough reason to withdraw.
4. The presenting officer did take part in the proceedings to the extent of asking for an adjournment. The case had been on a "float list". The

adjournment application was based on lack of time for another presenting officer to be found and to prepare the case.

5. The SSHD has considerable resources available. Nevertheless, it is common practice to leave some hearing lists, including but not limited to float lists, to proceed without any presenting officer or other representative. If this was thought to be a case in which to field a presenting officer, and there was any difficulty in providing one, the time to apply to the FtT was when the lists were intimated (which, we understand, takes place at least two days ahead). Alternatively, the matter might have been raised at the beginning of the hearing day. As it was not, the case must be regarded as one in which the SSHD was prepared to take the risk of no presenting officer being available. The matter was not one which ought to have been left until the case came on for hearing. The appellant and his representatives were entitled to expect that the case would go ahead, if and when a Judge became available. We see no procedural unfairness in the Judge deciding to proceed.
6. The substantive conclusion reached was open to the Judge. We see no more than disagreement in the further grounds of appeal, alleging inadequacy of reasoning and misdirection in law.
7. The child expected by the appellant and his partner at the time of the FtT hearing has since been born. If the decision were to be remade, or if Mr Busari were to make a further application to the SSHD, all the indications are that he would succeed.
8. The decision of the First-tier Tribunal shall stand.
9. No anonymity direction has been requested or made.



1 August 2017
Upper Tribunal Judge Macleman