**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/14627/2017

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Oral Decision & Reasons Promulgated** |
|---|---|
| **On 5 December 2018** | **On 04 April 2019** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JORDAN**

**Between**

**MR HARRY EDIONSERI OSEMWENGIE**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S. Nwaekwu, Moorehouse solicitors
For the Respondent: Ms S Cunha, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals against the decision of First-tier Tribunal Judge Seelhoff promulgated on 17 August 2018 following a hearing at Hatton

Cross on 3 August 2018. On that occasion the appellant was neither represented nor attended.

2. Before I deal with the evidence that was submitted in support of an application for an adjournment, I will set out the immigration history.

3. The appellant was granted leave to enter the United Kingdom from 3 September 2014 until 30 January 2016. On 27 January 2016 he applied for leave to remain in the United Kingdom outside the Rules and that was rejected on 19 July 2016. I am not entirely sure when he actually entered the United Kingdom, but in the decision letter it said that he had lived continuously in the United Kingdom for approximately nine months. That would indicate that he entered the United Kingdom some time in January 2016. On the face of it, when he had been granted leave to remain as a student and that leave had expired, there would be no reason why he should be entitled to remain in the United Kingdom outside the Rules. However, the Secretary of State invited the appellant to attend an interview. That was a request made on 29 August 2017 but the appellant failed to attend the interview along with his partner on 12 September 2017. Accordingly, the appellant was invited to attend on 12 October 2017. Once again he failed to attend. Worse still, he provided no further explanation as to why. Accordingly, there was very little that sounded in a viable claim for leave to remain outside the Rules. There were two separate occasions when he was invited to attend for interview and failed, and finally he has never provided any explanation for his failure to attend. That was entirely sufficient for the Secretary of State to find that the suitability requirements for leave to enter had not been met.

4. It followed from this that the claim was bound to fail. Nevertheless, even if there had been a viable Article 8 claim, none was put forward with sufficient clarity to establish that the eligibility requirements, although not met, should be overlooked in order to provide the appellant with leave to remain.

5. The decision maker went on to consider beyond the eligibility requirements, whether or not Exception 1 applied, and since the appellant was in breach of immigration law, Exception 1 did not apply. There was no relevant child when the Secretary of State went on to consider what would have happened had Exception 1 applied. As a result of there being no relevant child, the Secretary of State reasonably concluded that he had not seen any evidence of any *insurmountable obstacles* in accordance with Exception 2. Insurmountable obstacles he reminded himself would be very significant difficulties that either the appellant or his partner would face in continuing family life outside the United Kingdom.

6. The decision maker then went on to consider whether the time that the appellant had spent in the United Kingdom was sufficient to provide him with leave to remain. He noted that the appellant had resided in Nigeria until he was aged about 35, and therefore unsurprisingly, there would not be *very significant obstacles* to his integration into Nigeria. Those reasons

were compelling. They set out a series of good reasons why the claim was bound to fail. Nevertheless, the appellant appealed to the Tribunal.

7. The grounds of appeal to the Tribunal were hopeless. There is an allegation of irrationality and *Wednesbury* unreasonableness, though no details were provided of what was said to be irrational and what was said to be *Wednesbury* unreasonable. It was said that it was not in accordance with the relevant and applicable law. Once again there is no suggestion of what the law was and how it was that the decision was not in accordance with it.

8. It was then said that consideration was not given to Article 8, but no details are provided as to what that dereliction of duty might have been.

9. It follows that the grounds of appeal were simply a device to bring the case to the Tribunal without there being any substance whatever behind them.

10. It is against that background that the hearing has to be assessed.

11. On the day of the hearing 3 August 2018, the appellant did not attend. There was however a document provided from the North Middlesex University Hospital which indicated that this appellant had self-referred himself to the hospital and the diagnosis which the appellant himself gave was food poisoning. That was entirely related to what he said had been his meal the day before. There is nothing in the material to show that there was anything seriously wrong. He was discharged in the course of the day. There was no diagnosis, but if anything, it could only have been a *suspected* diagnosis of food poisoning. No further document was provided, and indeed no further document was provided, after the event, to indicate that he had been to the GP, that the GP had examined him and had made a diagnosis and was satisfied on examination of the patient that there was something wrong with him. So the judge was faced with the decision as to whether or not he should grant an adjournment.

12. The appellant in the preparation of the case had instructed solicitors. Those solicitors had served no evidence in advance of the appeal. There was no witness statement. There was only a letter from those solicitors that the appellant had instructed them to withdraw the appeal because he was not feeling well and had attended hospital on 1 August 2018. The judge did not treat that as being an express withdrawal because he thought it was equivocal and so he treated it as a request for an adjournment.

13. The judge considered the overlying circumstances and the appellant's apparent inability to attend the hearing on 3 August 2018. The papers, the judge noted, said that the appellant had attended hospital on 1 August 2018. The report said the appellant had apparently had fish the previous evening. The judge incorrectly says the appellant was diagnosed with food poisoning. In fact, there was no such diagnosis. He was discharged

the same day. That does not appear to be a reason why the appeal should be adjourned some two days later.

14. The judge noted that no witness statements had been made, the outline of the appeal had not been stated in the grounds of appeal. There had been no bundle. There was no evidence from the schools, from his wife:, there was nothing upon which it could properly be said that, if the appellant had attended on 3 August 2018, his appeal had any prospect of succeeding. Indeed, nothing further is said about what the overall merits of the appeal might be.

15. This is not a case where the appellant had not been served by the Tribunal and consequently he was entitled to a hearing because of the interest of justice. This was a case where he had been properly served with a notice of hearing and was required to participate in the appeal. He had plainly failed to do so from the very beginning. In those circumstances it was therefore open to the judge to look at the underlying merits of the appeal.

16. In the grounds of appeal before me nothing is said about the underlying merits of the claim. It is simply said that it should have been adjourned on the basis of medical grounds. That is simply not correct in view of the circumstances which I have outlined. There was, at the very least, a requirement that the appellant's grounds should put forward an arguable case that his removal was a violation of his human rights. No arguable case was submitted to me this morning to suggest that there is a viable case to be brought forward. In those circumstances, I am satisfied that the judge was entirely correct in refusing the adjournment. For these reasons, there was no error of law.

17. No anonymity direction is made.

DECISION

There being no error of law in the decision of the First-tier Tribunal, his determination of the appeal shall stand.

ANDREW JORDAN
DEPUTY JUDGE OF THE UPPER TRIBUNAL

2 April 2019