In The Upper Tribunal
Immigration And Asylum
Chamber

Case No: UI-2023-005171
UI-2023-005172
UI-2023-005173
First-tier Tribunal No:
HU/00785/2022
HU/00788/2022
HU/00789/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 April 2024

Before

Deputy Upper Tribunal Judge MANUELL

Between

Ms TOREEFAH OYINDAMOLA OTTUN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at FIELD HOUSE on 23 February 2024

DECISION AND REASONS

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Introduction

1. This appeal was originally linked with the appeals of Ms Rashidat Olayinka Omotanwa Ottun (born on 1 December 1977) and Mr Mustaan Olawale Ottun (born on 30 May 2005), the Appellant's mother and younger brother. Both are nationals of Nigeria. After their appeals had been dismissed in the First-tier Tribunal they made fresh applications to the Respondent on 26 May 2023. Those fresh applications were granted on 19 July 2023 and they received limited leave to remain. Their appeals (UI-2023-005171 and UI-2023-005173) are accordingly subject to statutory abandonment and no further action is required on them by the Upper Tribunal: Rule 17A, Tribunal Procedure (Upper Tribunal) Rules 2008. The Appellant's appeal however remains live.

2 The Appellant is a national of Nigeria born on 26 December 1983, i.e., 19 years of age at the date of the hearing. She had entered the United Kingdom as a visitor on 30 October 2020 and applied for leave to remain as a dependant child on 17 June 2021.

3. The Appellant appealed late to the Upper Tribunal, with permission granted by Upper Tribunal Judge Sheridan on 19 January 2024, against the decision of First-tier Tribunal Judge Colvin who had dismissed the appeal of the Appellant against the refusal of her human rights claim. The decision and reasons was promulgated on 5 May 2023.

4. Upper Tribunal Judge Sheridan granted permission to appeal on the grounds that it was arguable that procedural unfairness had occurred. Conflicting notices of the hearing had been sent to the Appellant, one indicating that the hearing would be on 20 April 2023 and another indicating that 20 April 2023 was the deadline for the Respondent to file his review and that a substantive hearing date would thereafter be fixed. The Appellant's non-attendance on 20 April 2023 was reasonable and understandable in the circumstances.

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Submissions

5.   Ms Ahmed for the Respondent accepted that the procedural unfairness identified by Upper Tribunal Judge Sheridan when granting permission to appeal had indeed occurred, such that the Appellant had been deprived of a hearing. The correct course was for the decision to be set aside and the appeal remitted to the First-tier Tribunal for a fresh hearing.

6.   The Appellant was content with that outcome.

Material error of law finding

7.   As Ms Ahmed accepted, through no fault of Judge Colvin the Appellant had not been aware of the correct date of her appeal hearing and so her non-attendance was not deliberate. An administrative error occurred, causing procedural unfairness. The tribunal so finds.

8.   The onwards appeal is accordingly allowed. It follows that the decision and reasons dated 5 May 2023 is set aside, with no findings preserved. The Appellant's appeal awaits determination in the First-tier Tribunal.

Notice of decision

The appeal is allowed

The making of the previous decision involved the making of a material error on a point of law. The decision is set aside with no findings preserved.

The appeal is remitted to the First-tier Tribunal, to be heard again by any judge except First-tier Tribunal Judge Colvin.

Signed R J Manuell   **Dated**   26 February 2024

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Deputy Upper Tribunal Judge Manuell