IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/23032/2014

THE IMMIGRATION ACTS

Heard at Field House and decision given orally on 12 January 2016	**Decision & Reasons Promulgated On 29 January 2016**

Before

The President, The Hon. Mr Justice McCloskey
Deputy Upper Tribunal Judge Rimington

Between

BABATUNDE ALIU ADEDEJI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
Appellant: No appearance or representation
Respondent: Mr S Kandola, Senior Home Office Presenting Officer

DECISION AND REASONS

1. We shall deal with this appeal in the following way. We dismiss the appeal with a stay of seven days. That gives the Appellant seven days from the date of transmission of our decision to make any representations that he may wish to make. That is perhaps excessively generous but in the circumstances we cannot exclude the possibility that this is genuine in his belated protestations of indisposition and we think that is the fair and reasonable way of proceeding.

2. As regards our reasons for dismissing the appeal we find no error of law in the decision of the First-tier Tribunal. Indeed we consider that permission to appeal should not have been granted in this case.

3. The Appellant did not attend at first instance and the judge therefore determined the appeal on the papers. He did so by explicit reference to the Secretary of State's decision. This records that the Appellant sought and was refused indefinite leave to remain in the United Kingdom outside the Immigration Rules on compassionate grounds. That application was dated 26 February 2014. It was made two days prior to the expiry of the Appellant's two year spousal visa. The application was made by representatives on behalf of the Appellant.

4. The gist of the application was, and I quote:

> "Our client's relationship with spouse is strained now so our client needs time for reconcile [sic] with his spouse and therefore requests you to allow our client further leave to remain until the differences are sorted out".

Pausing there this was a thoroughly hopeless application on any showing. If it were not hopeless on those facts, whatever shred of merit it may have evaporates in the information disclosed in the following sentence, uncontested, that in fact the parties had been divorced on 28 August 2013. The decision maker considered the various potentially applicable provisions of the Rules and concluded that the application must be refused.

5. In the circumstances which materialised on the day of the hearing at first instance we are entirely satisfied that nothing further was required on the part of the judge. He adverted to the refusal letter, he recorded that he had read it carefully, that he had paid specific attention to the justifications advanced for the negative decision and that he had taken into account the relevant provisions of the Immigration Rules, together with the new provisions of the 2002 Act introduced by the Immigration Act 2014. This thoroughly hopeless application which was refused by the Secretary of State matured into a thoroughly hopeless appeal. The FtT's approach and conclusion are unassailable.

6. What gives rise to most concern in this case is the treatment of the application for permission to appeal. It is said in the grant that the decision makes no attempt to address the issues in the appeal and is devoid of findings of fact. That ignores the context entirely and, furthermore, does not engage at all with what the judge actually said in his concise but adequate decision. We record in this context our cognisance of the decision of the Immigration and Asylum Tribunal in the case of BT [2004] UKIAT 00311 and in particular [6] and [7] thereof.

7. In conclusion permission to appeal should not have been granted. We dismiss the appeal on its merits. We allow the Appellant a period of seven days within which to make representations following transmission of our

decision. The effect of that is that our decision does not take immediate effect but rather will take effect on a slightly but not excessively delayed date. We repeat, we take that course to account for two possibilities. One is this may be a genuine case of real incapacity to attend the Tribunal this morning. Secondly, though less likely, there may be some knockout blow in the Appellant's favour which has not found its way into the deliberations of the panel. We make it clear that in a surprisingly large majority of cases those who claim to be unable to attend a court or tribunal very rarely are able to substantiate their incapacity in an acceptable way. It is a truism that the great majority of those who are able to travel to a hospital or doctor's surgery are also able to travel to a tribunal or court building and are able to give evidence or present their case without undue handicap.

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Date: 25 January 2016