



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

**Appeal
Number**

VA/05055/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 11 June 2014 at On 12 June 2014
Determination
promulgated**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

**Entry Clearance Officer,
Lagos**

Appellant

and

**Symphorosa Otunuya Otike-Odibe
(Anonymity direction not made)**

Respondent

Representation

For the Appellant: Ms. A. Everett, Home Office Presenting Officer.

For the Respondent: No appearance.

**DETERMINATION AND REASONS
incorporating
NOTICE OF WITHDRAWAL**

1. The Respondent is a citizen of Nigeria born on 23 August 1967. An application for entry clearance as a visitor was refused for reasons set out in a Notice of Immigration Decision dated 19

February 2013 with reference to paragraph 320(7A) of the Immigration Rules.

2. The Respondent appealed this decision. His appeal was allowed by First-tier Tribunal Judge Petherbridge after consideration without a hearing - 'on the papers' - for reasons set out in a determination promulgated on 11 April 2014.

3. The Entry Clearance Officer applied for permission to appeal to the Upper Tribunal on the ground that the First tier Tribunal had no jurisdiction to consider the appeal because the immigration decision under appeal had been withdrawn by an Entry Clearance Manager on 3 December 2013, and the Tribunal duly notified. Permission to appeal was granted by First-tier Tribunal Judge Hollingworth on 6 May 2014.

4. There was no appearance by or on behalf of Mr Otike-Odibi today. I am satisfied that due notice of the hearing was given. No explanation for non-attendance has been received by the Tribunal. It is to be noted that Mr Otike-Odibi had requested a 'paper' hearing before the First-tier Tribunal. In any event I am satisfied that Mr Otike-Odibi has been afforded an opportunity to attend the hearing by way of a representative or his nominated sponsor, and in any event has been afforded an opportunity to forward to the Tribunal any representations he might wish to make in the appeal. In all the circumstances I am satisfied that it is appropriate to proceed with the appeal in his absence.

5. The Appellant herein - the Entry Clearance Officer - challenges the decision of the First-tier Tribunal for want of jurisdiction. In support of the application for permission to appeal an email exchange between the Appellant and the 'ECO Contact' of the First-tier Tribunal was produced, together with a document headed 'Withdrawal of Decision' and sub-headed 'Rule 17 - Asylum and Immigration Tribunal (Procedure) Rules 2005 for the First-tier Tribunal'.

6. The Withdrawal of Decision includes the Respondent's name and the appeal reference, and is in the following terms:

"The decision to refuse the above named entry clearance as a FAMILY VISITOR has now been overturned by the Entry Clearance Manager/Entry Clearance Officer on review. I am notifying the First-tier Tribunal (Immigration and Asylum

Chamber) that the decision to which this appeal relates has been withdrawn. Consequently, there is no valid immigration decision for the applicant to appeal."

7. The Withdrawal of Decision is dated 3 December 2013, and it is evident that it was forwarded to the Tribunal by email on 4 December 2013. There is an email response from the Tribunal stating *"Thank you for your email. Please be advised that our records have now been updated accordingly."*

8. For reasons that are unclear the Withdrawal of Decision and the exchange of emails had not been copied into the court file at the relevant time, and the file was not otherwise marked to indicate the withdrawal of the Entry Clearance Officer's decision. It follows that because of this administrative error Judge Petherbridge proceeded to determine the appeal in ignorance of the fact of the withdrawal of the underlying decision.

9. In my judgement the Withdrawal of Decision dated 3 December 2013 was sufficient notification such that the appeal was to be treated as withdrawn, pursuant to rule 17(2) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. Pursuant to section 104(1)(b) of the Nationality, Immigration and Asylum Act 2002 there was then no longer a pending appeal. It follows that Judge Petherbridge had no jurisdiction to consider and determine the appeal.

10. In such circumstances I find that the decision of the First-tier Tribunal is flawed for error of law and requires to be set aside.

11. In circumstances where the underlying decision has been withdrawn it is not necessary to remake the decision in the appeal. However, pursuant to rule 17(3) it is appropriate that the Tribunal now serve on the parties a notice that the appeal has been recorded as having been withdrawn - which should have been done in December 2013.

12. Accordingly this document is to be treated as such a notice.

Decision

13. The decision of the First-tier Tribunal Judge contained an error of law and is set aside.

14. Pursuant to rule 17(3) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 notice is hereby given that the appeal is recorded as having been withdrawn by reason of the Entry Clearance Officer having notified the Tribunal that the decision to which the appeal relates has been withdrawn.

Deputy Judge of the Upper Tribunal I. A. Lewis 11 June 2014