



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

**Appeal Number: IA/11049/2015**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16 December 2015**

**Decision Promulgated  
On 4 January 2016**

**Before**

**UPPER TRIBUNAL JUDGE SOUTHERN**

**Between**

**OLUEBUBE CHIZARAM IHEMADU**

**Appellant**

**And**

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

**Respondent**

**Representation:**

For the Appellant: Mr I. Ikeh of counsel, of Moorehouse, solicitors  
For the Respondent: Mr I. Jarvis, Senior Home Office Presenting Officer

**DECISION**

1. The appellant appealed against a decision of the respondent, made on 10 March 2015 to refuse her application for leave to remain, that application being founded upon rights protected by article 8 of the ECHR. By a decision promulgated on 12 June 2015 the appeal was dismissed by First-tier Tribunal Judge Suffield-Thompson.
2. In seeking permission to appeal, the appellant advanced a single ground of appeal. The appellant says that as an oral hearing had been requested but the appeal was

determined on the papers, there has been a procedural irregularity giving rise to such unfairness as to amount to an error of law.

3. When lodging notice of appeal with the First-tier Tribunal the appellant indicated that she wished the appeal to be determined on the papers, without an oral hearing. This generated the customary response form the First-tier Tribunal which was to acknowledge receipt and to indicate a date by which any documentary material the appellant wished to be considered had to be lodged. In this case, the appellant had until 21 May 2015 to lodge any further documents.
4. The appellant, in consultation with her solicitors, had a change of mind and decided that she would, after all, prefer to have the appeal determined after an oral hearing. This request is set out clearly in a letter dated 21 May 2015 prepared by Moorehouse solicitors, a copy of which is before me. In that letter they confirm that the fee payable for an oral hearing would be paid.
5. In the event, on 8 June 2015 the appeal was determined on the papers and without an oral hearing. It is clear and beyond doubt that the letter from Moorhouse solicitors, dated 21 May 2015, was not before the judge and so he would have been unaware that any request for an oral hearing had been made.
6. In granting permission to appeal, First-tier Tribunal Judge McDade said this:

“If indeed the letter was sent in advance of the judge making the decision this constitutes an arguable error of law. At the error of law hearing the representative must be in a position to adduce evidence that the letter was posted rather than making mere assertions that it was...”
7. Today, the appellant was represented before the Upper Tribunal by Mr Ikeh of Moorhouse solicitors. He explained that he could not provide any evidence at all that the letter had been sent or that it had been delivered to the Tribunal. The letter, he said, had been sent by fax only to the number typed on the face of the letter. Therefore he could provide no proof of posting because the letter was not posted. He could provide no proof that the letter had actually been sent by fax. This was because the letter itself bore no stamp or endorsement from a visit to the fax machine and there was no fax transmission report available.
8. For the respondent, Mr Jarvis drew attention to what had been said in the rule 24 response letter. He submitted that in making the assertion that there had been a procedural irregularity in failing to bring to the attention of the judge that a request for an oral hearing had been made there was a burden of proof upon the respondent to be discharged. There has to be some evidence that the letter had been sent and here there was none.
9. That is plainly correct. It cannot be deduced from the fact of the existence of a letter in the hands of the solicitors that it must have been sent. Even if there is no stamp upon it from the fax machine and no fax transmission report retained, there could at least be a statement from the author of the letter explaining the instructions he or she had given to ensure that the letter was in fact communicated to the Tribunal. Quite simply there is nothing at all offered to demonstrate that the letter had been sent, despite the clear and unambiguous requirement for that as set out in the grant of permission.

10. It follows from this that the appellant has not established any basis upon which to disturb the determination of the appeal by the First-tier Tribunal.

Summary of decision:

11. First-tier Tribunal Judge Suffield-Thompson made no error of law and his decision, promulgated on 12 June 2015, shall stand.

Signed

A handwritten signature in black ink, appearing to read 'P. Sullivan', with a stylized flourish at the end.

Upper Tribunal Judge Southern  
Date: 16 December 2015