ASYLUM AND IMMIGRATION TRIBUNAL

BO and Others (Extension of time for appealing) Nigeria [2006] UKAIT 00035

THE IMMIGRATION ACTS

Date of Publication: 12 April 2006

Before:
Mr C M G Ockelton (Deputy President)
Mr J Bailey (Immigration Judge)
Mr G Peart (Immigration Judge)

Between

Appellant

and

ENTRY CLEARANCE OFFICER, LAGOS

Respondent

and

Appellant

and

ENTRY CLEARANCE OFFICER, LAGOS

Respondent

and

Appellant

and

ENTRY CLEARANCE OFFICER, ISLAMABAD

Respondent

and

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

and

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

The AIT has no power to extend time for appealing in the absence of a notice of appeal. If a notice of appeal is given out of time, the first task in deciding

whether to extend time is to see whether there is an explanation (or a series of explanations) that cover the delay. If there is, it and all other relevant factors, such as the strength of the grounds, the consequences of the decision, the length of the delay and any relevant conduct by the Respondent are to be taken into account in deciding whether "by reason of special circumstances it would be unjust not to extend time".

DETERMINATION OF ISSUE

1. In the Asylum and Immigration Tribunal, an appeal against an immigration decision is instituted by giving notice of appeal to the Tribunal. In terms of transparency and independence, this is a great improvement on the system that existed before 4 April 2005. Up to that time, the notice of appeal was served on the Respondent, and it regularly happened that the Respondent did not forward the papers promptly to the Appellate Authority and, as a result, the Appellant might have to wait months or years before his appeal was heard. All that has now changed.

2. One consequence of the change is the treatment of notices of appeal that are out of time. When notices of appeal were served on the Respondent there were specific provision in the Rules for the Respondent to condone any lateness and it is understood that he often did so. Only in cases where the Respondent refused to treat the notice as given in time was there any need for the Appellate Authorities to reach a judgment on the matter. Under the present system, however, every decision on whether to extend time is a judicial decision: and there are arrangements in place for those decisions to be made by Immigration Judges sitting as "*Duty Judge*" at the Tribunal's registry in Loughborough. The purpose of this determination is to give guidance to Duty Judges and information to others on the principles that the Tribunal will employ in deciding whether to extend time for notices of appeal.

The statutory framework

3. The decisions against which appeals can be brought are listed in s82(2) of the 2002 Act. We do not need to set that section out: the decisions include those relating to access to the United Kingdom by non-UK nationals who are abroad and decisions relating to remaining in the United Kingdom by non-UK nationals who are here. Under the provisions of s4 of the 1971 Act and associated legislation, the decision-maker may be the Secretary of State or an Immigration Officer in this country or an Entry Clearance Officer abroad, depending on the nature of the decision.

4. Section 84(1) of the 2004 Act sets out the grounds on which a person may appeal to the Tribunal. Again, we do not need to set this section out. The possible grounds include allegations that the decision

breaches an individual's rights under the Refugee Convention or the European Convention on Human Rights, discriminates against him on racial grounds, is contrary to EU law, is contrary to the Immigration Rules, or is otherwise not in accordance with the law.

5. Section 106 of the 2002 Act contains the rule-making power, under which the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230) are made.

6. The time for giving notice of appeal is set out in Rule 7 and ranges from five to twenty-eight days after the effective notice of decision. (There are special arrangements for "*fast-track*" cases, which we do not consider further in this determination.) Rule 8 sets out the form and contents of the notice of appeal. Amongst other requirements, the notice must include the grounds of appeal and reasons in support of the grounds, and be signed and dated. Rule 9 provides that if a notice of appeal is given against a decision carrying no right of appeal, the Tribunal "*shall not accept the notice of appeal*". Rule 10 is headed "*Late notice of appeal*" and is as follows:

> "(1) If a notice of appeal is given outside the applicable time limit, it must include an application for an extension of time for appealing, which must-
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> (a) include a statement of the reasons for failing to give the notice within that period; and
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> (b) be accompanied by any written evidence relied upon in support of those reasons.
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> (2) If a notice of appeal appears to the Tribunal to have been given outside the applicable time limit but does not include an application for an extension of time, unless the Tribunal extends the time for appealing of its own initiative, it must notify the person giving notice of appeal in writing that it proposes to treat the notice of appeal as being out of time.
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> (3) Where the Tribunal gives notification under paragraph (2), if the person giving notice of appeal contends that-
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> (a) the notice of appeal was given in time, or
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> (b) there were special circumstances for failing to give the notice of appeal in time which could not reasonably have been stated in the notice of appeal,
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> he may file with the Tribunal written evidence in support of that contention.
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> (4) Written evidence under paragraph (3) must be filed-
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> (a) if the person giving notice of appeal is in the United Kingdom, not later than 3 days; or
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> (b) if the person giving notice of appeal is outside the United Kingdom, not later than 10 days,
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> after notification is given under paragraph (2).
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> (5) Where the notice of appeal was given out of time, the Tribunal may extend the time for appealing if satisfied that by reason of special circumstances it would be unjust not to do so.
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> (6) The Tribunal must decide any issue as to whether a notice of appeal was given in time, or whether to extend the time for appealing, as a preliminary decision without a hearing, and in doing so may only take account of-
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> (a) the matters stated in the notice of appeal;

(b) any evidence filed by the person giving notice of appeal in accordance with paragraph (1) or (3); and
(c) any other relevant matters of fact within the knowledge of the Tribunal.

(7) Subject to paragraphs (8) and (9), the Tribunal must serve written notice of any decision under this rule on the parties.

(8) Where-
(a) a notice of appeal under section 82 of the 2002 Act which relates in whole or in part to an asylum claim was given out of time;
(b) the person giving notice of appeal is in the United Kingdom; and
(c) the Tribunal refuses to extend the time for appealing,
the Tribunal must serve written notice of its decision on the respondent, which must-
(i) serve the notice of decision on the person giving notice of appeal not later than 28 days after receiving it from the Tribunal; and
(ii) as soon as is practicable after serving the notice of decision, notify the Tribunal on what date and by what means it was served.

(9) Where paragraph (8) applies, if the respondent does not give the Tribunal notification under sub-paragraph (ii) within 29 days after the Tribunal serves the notice of decision on it, the Tribunal must serve the notice of decision on the person giving notice of appeal as soon as reasonably practicable thereafter."

7. We do not need to set out any other Rules. The provisions in Rule 10(8) and (9) do not require further treatment here: they are part of a scheme running through the whole of the Rules relating to the service of decisions. We draw attention to Rule 10(6). The effect of requiring the decision to be taken "*as a preliminary decision*" is twofold. For the purposes of the Rules, the decision is not a "*determination*" as defined in Rule 2; and the procedure for reconsideration introduced by s103A ff of the 2002 Act is not, by s103A(7)(a), available in the case of a preliminary decision. Thus, although the decision has to be taken without a hearing and on limited material, it is, so far as the Tribunal is concerned, final and can be revisited only by way of Judicial Review.

8. In the light of the requirements of Rule 10(6), it is not possible for the Tribunal to hear oral argument on this question or to put points to the parties. In making this determination, however, we have endeavoured to take account of those matters which our experience shows are likely to recur. There is no authority directly in point, but there are recent decisions on similar issues in R (Tofik) v IAT [2003] EWCA Civ 1138, MN and others* [2004] UKIAT 00182, and AK and others* [2004] UKIAT 00201, all of which we have considered.

General Principles

9. No doubt it goes without saying, but we nevertheless emphasise that the Immigration Judge's first task must be to see whether the appeal was in fact in time. If it was, no question of extension of time arises. It may be that a member of the Tribunal staff, or even the appellant,

thought that the appeal was out of time: the Immigration Judge needs to check the calculation.

10. It will be seen that Rule 10 envisages three possibilities. There may be an application to extend time, properly supported, made at the beginning of the process: Rule 10(1). There may be no application, but the Tribunal may, acting within the confines of Rule 10(5) and (6), nevertheless extend time "*of its own initiative*": Rule 10(2). Or there may be a statement of special circumstances, properly supported, made following the notification envisaged in Rule 10(2): Rule 10(3)-(4).

11. It will be seen also that Rule 10 does not envisage an application for the extension of time alone. If a notice of appeal is given out of time there may be an application for extension; but there is no jurisdiction to extend time except in response to an actual notice of appeal.

The explanation for the delay

12. Through the Rules, Parliament has made it clear that the explanation for the lateness of a late notice is of importance. An appellant who knows that his notice will be late is required to give his explanation in the notice itself; if there is no explanation then, by the procedure under Rule 10(2)-(4), the Tribunal is required to take certain steps to ensure that any appropriate explanation is before it. In all cases, the explanation for the lateness of the notice needs to be supported by evidence and is an integral part of an application for time to be extended.

13. It seems to us that the explanation for the lateness of the notice should be the Immigration Judge's starting point. It is sometimes said or implied that the starting point might be the strength of the grounds. Sometimes it is suggested that the strength of the grounds of appeal ought to be sufficient to overcome failure to comply with Rules as to time, and it is sometimes said that the strength of the grounds should always be considered. We do not think that is quite right. No doubt, as we indicate below, the strength of the grounds is a factor to be considered if there is some explanation or excuse for the lateness. But it does not seem to us that strong grounds could, by themselves, be a good reason for extending time. If it were so, a person who had strong grounds would in essence be exempt from the requirements as to time.

14. So the first question is, what is the explanation for the lateness? If there is no explanation at all, or no satisfactory explanation, or an explanation which is not supported by evidence that ought to have been readily available, we regard it as very unlikely indeed that it will be right to say that time should be extended. We do not say "*never*", because that would be dangerous. But in the absence of an explanation, we think that it could only be where there are obvious and quite exceptional reasons for extending time and where the issue is one

of wider public importance or where (despite the lack of information provided by the appellant) it is clear that there has been a serious denial of justice, that time would be extended in circumstances in which no, or no properly supported, explanation for the lateness is given.

15. In deciding whether there has been an explanation for the lateness, the Immigration Judge should ensure that whatever explanation is given covers the whole of the period of delay. A week's sickness, even if properly evidenced, is very unlikely to be an explanation for a month's delay.

16. It is our experience that, in this jurisdiction, delay is very often said to be the fault of the appellant's representatives. Either the representatives themselves acknowledge the delay as their fault, or one firm (or the appellant himself) blames the delay on another firm. The principles that we consider ought to be adopted in evaluating explanations of this sort are the following. First, delay by representatives cannot be an explanation for the appellant's own delay. If, therefore, the case is one in which the appellant might be expected to have himself been prompt in ensuring that a timely notice of appeal was entered on his behalf, or if the representatives' delay occurred only after time had already expired, it is very unlikely that delay by the representatives will be an effective explanation for the lateness of the notice.

17. Secondly, a delay by representatives, acknowledged by those representatives as their own fault, may be a satisfactory explanation: but the Tribunal keeps a record of those who offer such explanations, and a firm that finds itself obliged to acknowledge faults of this sort more than once or twice is likely to be reported to the Office of the Immigration Services Commissioner with a view to investigation either by the Commissioner herself or by the appropriate professional body.

18. There is, thirdly, the question of allegations made against a representative who is not now acting. The Tribunal's usual practice, when an appeal is current, is to require the person making the allegations to substantiate them either with an acknowledgement of fault from the earlier representative, or documentation showing that letters on the subject have been sent and not answered. We do not consider that this procedure is practicable in the case of extending time for appealing. Instead, in this type of case the Tribunal will consider the application for extension of time on its merits, noting the evidence that actually has been produced. If the application lacks even evidence which would have been available to the new representatives, that may be the end of the matter. If, on the other hand, the new representatives appear to have done all that they could do in order to make a proper application without extending the delay any further, the absence of information from the old representatives will not be fatal to the application for extension. The Tribunal is, however, likely to require

the new representatives to attempt to obtain an acknowledgement of fault from the old representatives and to show, at the hearing of the appeal, either the result or the record of failure. In all such cases the Tribunal is likely to make a report to the Office of the Immigration Services Commissioner.

19. The requirement for evidence is important. In assessing the explanation for delay, the Immigration Judge will be making findings of fact. If he is not shown evidence that ought readily to have been available, or if (whether or not evidence is produced) he does not believe the explanation given on the appellant's behalf, he is entitled to say so and to decide that there has been no effective explanation for the delay. As we have indicated above, in such a case it is very unlikely indeed that time should then be extended.

20. If, on the other hand, there is an effective explanation, whether it amounts to a good excuse or a bad one is merely one of the matters to be taken into account, with all other factors, in deciding whether "*by reason of special circumstances it would be unjust not to*" extend time.

Other factors

21. We cannot, of course, provide a comprehensive list of the other factors that might be relevant: every case depends on its own individual facts and merits. We offer the following observations and guidance on a number of factors that, in our experience, frequently arise for consideration.

(i) Strength of the grounds of appeal

As we have said, good grounds of appeal cannot be a substitute for timeliness. If there is an explanation for the delay, however, the strength of the grounds of appeal may help to compensate for a bad excuse. The strength of the grounds should therefore always be taken into account in deciding whether to grant an application for the extension of time that is properly supported by an explanation and evidence. The stronger the grounds are, the more likely it is that justice will demand that they be heard.

What then of weak grounds? If the grounds are non-existent or simply hopeless, it may be that no useful purpose would be served by extending time and so allowing an appeal to proceed. But the Duty Judge considering whether to extend time should remember that he is not deciding the appeal. If grounds are viable, their weakness should not of itself be a reason for refusing to extend time.

(ii) The consequences of the decision

Particularly because the refusal to extend time for appealing is for all practical purposes a final decision, the Duty Judge should take into account what the consequences of that decision will be. In the case of an out-of-country decision, the applicant will nearly always have an opportunity to make a new application, receive a new decision and, if necessary, appeal against it in a timely manner. (The only obvious exception is where the appellant has reached the age of eighteen since his original application and so cannot any longer have the benefits of being treated as a minor under the Immigration Rules.)

In many decisions relating to those who are within the United Kingdom, however, the consequence of the decision may be that the person no longer has the possibility of an in-country right of appeal: having failed successfully to appeal against the decision he may be subject to removal and, if removed, will for the future be able to maintain his rights only from abroad in response to some future immigration decision. There is thus no doubt that the consequences of refusal to extend time are likely to be more severe when the decision against which the appeal is to be brought is one which carries a threat of removal. We have no doubt that the Duty Judge should take that into account.

Having said that, it may well be that the express or implicit threat of removal in the case of an in-country claimant is something which ought to stir him into action: if that is right, it would follow that in such circumstances a long delay would be more difficult to condone.

(iii) Length of delay

That brings us to general issues relating to the length of the delay. As we have indicated, there must be an explanation or series of explanations that properly cover the whole of the delay. That said, however, it appears to us that if such explanations are put forward, there is no difference in principle between a long delay and a short delay. In particular, firstly, we would not say that there is any length of delay beyond which applications for extension could not normally succeed. Clearly, the length of the delay is a factor to be taken into account with all the other circumstances of the case, but an explanation that is adequate cannot be rendered less so by the length of the delay.

At the other end of the scale, we are unable to assent to the proposition that a short delay should always or regularly be condoned. That is equivalent to saying that appellants do not need to meet the requirements of the Rules. We see no such suggestion in the Rules themselves, nor does any principle of justice require it. In in-country appeals, a day's delay is equivalent to an addition of twenty percent or ten percent to the time allowed for appealing: it

can hardly be regarded as de minimis. And the fact that only a day has passed since the end of the time limited for appealing cannot conceivably be regarded as a "*special circumstance*". A person who is a day late needs to explain his lateness in the same way as a person who is a week or a month late. A routine extension, without an explanation or excuse for the delay, is not permitted by the Rules. But, again, the fact that the delay was only a short one is a factor to be taken into account in appropriate cases.

(iv) Prejudice to the Respondent

It is frequently asserted that a court should be more willing to extend time if to do so would cause no prejudice to the other party. We readily accept that this is a factor to be taken into account in matters relating, for example, to failure to comply with directions during pending litigation. The position in the cases which we are considering, however, is quite different. The prejudice to the Respondent is identical in every case. If there is an appeal, he will no doubt want to defend it. If there is not, he will be saved the trouble and expense of doing so. The passage of time makes no difference to those considerations; and we have not heard that, immediately time for appealing runs out in any case, the Respondent diverts to other projects the money that he would have used to defend an appeal if it had been brought. No doubt it could be said that the Respondent is entitled to know the extent to which he is at risk of having to defend an appeal. In practical terms, however, bearing in mind the numbers involved, the impact on the Respondent is minimal.

For these reasons, it appears to us that no argument based on lack of prejudice to the Respondent can have any force at all in individual applications for the extension of time.

(v) Mistakes, delays and breaches of Rules by the Respondent

No doubt it is a consequence of the enormous numbers to which we have just made reference that it occasionally happens that applications are lost or unaccountably delayed; sometimes mistakes are made in dealing with them, sometimes amounting to a breach of the Rules. We would not accept that all errors and mistakes by the Respondent entitle an appellant to an extension of time; but there are two areas in particular where the Respondent's conduct may be of relevance. First, it may be that an error by the Respondent has caused or contributed to the appellant's delay. For example, the Respondent might have made a mistake as to the address for the service of the notice of decision, or he might have miscalculated the date for the service of the notice of appeal and so misled the appellant into thinking that he had longer to appeal than he did have. It is very unlikely that an Immigration Judge would want to

take such a factor into account without the clearest of evidence supporting a claimant's allegation: but if there was such evidence, it is very likely that the interests of justice would require the Respondent's mistake not to be held against the appellant.

Further, where there is a breach of the Rules or a mistake or very extensive delay in the Respondent dealing with the appellant, it might in some circumstances be regarded as disproportionate to refuse to extend the appellant's time for appealing. Clearly, any such case would depend on the individual facts.

22. We must again emphasise that the foregoing is not intended to be a complete list. What is important is that the Duty Judge takes into account all the material that is before him and balances all the factors, including the adequacy of the explanation, against one another in order to decide whether the case is one in which there are special circumstances demanding that time be extended in the interests of justice.

Giving reasons for the decision to extend or not to extend time

23. It may not for present purposes matter very much whether the decision made under Rule 10 is regarded as an exercise of discretion (as so described in AK and others) or of assessment and judgment (as asserted in Tofik). What is certain in either event is that the reasons for the decision are an essential part of it and must accompany the decision when it is served on the parties under Rule 10(7). If the decision is to extend time, the reasons will probably be quite brief, perhaps simply indicating that by reason of special circumstances and in all the circumstances of the case it would be unjust not to do so. If the extension has been refused because no effective reason for the delay has been given, it will in almost all circumstances simply be enough to say so. But where there is an explanation for the delay and other factors have been taken into account, the decision must contain enough information for a reader to be confident that the judgment was a proper response to the material available.

24. With those principles in mind, we turn to the individual cases before us.

OA/04994/2006 and OA/04998/2006

25. These cases are to all intents and purposes identical. Applications for entry clearance as a working holidaymaker were refused on 12 August 2005 on the ground that the Respondent was not satisfied that each Applicant was intending to take employment incidental to a holiday and intended to leave the United Kingdom at the end of the working holiday. The time for appealing is evidently accepted by the Applicants as having expired on 12 September 2005. The notices of appeal are each dated "*03/02/2005*", no doubt meaning 3 February 2006; they were

received at the Tribunal's registry on 13 February 2006, accompanied by letters from the Applicants' representative dated 20 December 2005 and from the Applicants themselves dated "*02/02/2006*". The application for extension of time entered on the appeal form in the first case is as follows:

> "We have an accident on our way coming from Abuja on the day of our interview. We can not get our notice of appeal again, because we are injured and stay in hospital for a long period. Our father called the British High Commission on December and the British High Commission sent another to us through the e-mail and we call the AIT we were told to send it and give reason of delay."

26. The reasons given on the other form are not materially different. The representatives' letter includes the following paragraph:

> "Firstly, we wish to apply for an extension of time within which to submit this appeal. The lateness is due to the fact that the package containing the notice of appeal got to our client far beyond the normal expected time."

27. There is no further evidence of an accident or of a stay in hospital.

28. It is, however, clear from the representatives' letter that by 20 December 2005 the "*package*" had been received. It may be regarded as somewhat surprising that the representative makes no reference to the accident or hospitalisation.

29. We see no reason to give any credence to the assertions about the accident and the hospitalisation and, without further details, they in any event provide no explanation for any delay. Further, it is apparent that there is no explanation at all for the delay between 20 December 2005 and the beginning of February 2006 when the appeal forms were completed.

30. The grounds of appeal amount merely to disagreement with the Entry Clearance Officer's decision. The Appellants are at liberty to make another application for a working holidaymaker's visa. There are no other factors of which we are aware. In view of the fact that there is no explanation for a substantial proportion of the delay and an unsatisfactory explanation for the rest of it, we decline to extend time.

<u>VA/03709/2006</u>

31. This was an application by a citizen of Pakistan to visit her husband, who is in prison in the United Kingdom. The application was refused on 13 December 2005, on which date the Applicant was served with a notice of refusal and time began to run. It expired on 11 January 2006. The reasons for refusal indicate that the Entry Clearance Officer accepted the bona fides of the sponsor, the Applicant's brother-in-law, but continue as follows:

> "Your stated purpose of travel is to visit your husband who has been serving a prison sentence since 1998 and whose expected release date is 2011. However, you have submitted no satisfactory evidence in this regard. You intend to visit with your son who is a British citizen and state that you will apply to join your husband permanently in the UK upon his release from prison. You have failed to provide reasonable evidence to demonstrate that you are established in Pakistan. You have produced no satisfactory evidence of your income or of your ownership of property or assets. As such I consider that you do not have strong economic or social ties to Pakistan to satisfy me of that you intend to leave the UK but rather that you have good economic and social reasons for not doing so. Therefore on the balance of probabilities, I am not satisfied that you intend a visit for the purpose and period as stated by you. **41(i), (ii) & (iii) of HC 395**."

32. The grounds of appeal assert that the Entry Clearance Officer was wrong in suspecting that the Applicant was not financially secure in Pakistan and had little reason to return there. Documents are enclosed, including an undated letter from HMP Long Lartin, including a memorandum relating to the Applicant's husband's first parole review in June 2009, a letter from the Secretary of the Applicant's Union Council, a bank statement, and an affidavit by the Applicant. The notice of appeal is signed and dated 31 December 2005. In the space on the form for explaining any lateness is written the following:

> "Being sent in time. x
> A bit late due to the papers of prison received late.
> Thanks."

33. The explanation is no doubt that, when the form was completed it was expected that it would be sent in order to arrive before the closing date, but there was then a delay.

34. The first question for us is whether the delay is explained. There is a letter from the sponsor, the material part of which reads as follows:

> "As you are already aware my brother, Shazad Ali Naz, is currently serving a prison sentence at H.M.P Long Lartin. In response to your request we asked the prison for written confirmation of his sentence; however they took time in processing this request, which caused initial delay in us lodging the appeal. Having received the confirmation from the prison, Shazad posted this to Pakistan which caused further delay due to the international postal system. I have also been informed that the above reasons have already been put in writing with the appeal."

35. No dates are given. The appeal form, dated as we have indicated, states that the evidence from the prison is "*enclosed*". There is nothing in the material before us to show that the letter was in fact received after 31 December or at any other time that prevented the appeal being lodged in time. Indeed, we notice that it is only the letter from the Secretary of the Union Council that bears a date (16 January 2006) that is outside the time limited for appealing.

36. Further, there is no explanation for the failure to adduce evidence from the prison at the time of the application; the grounds amount merely to disagreement with the Entry Clearance Officer's conclusions; the application can easily be made again and the Applicant's family situation is extraordinarily unlikely to change in the immediate future. Although in this case the delay was only eight days it is not explained and we are, as a result, very far from satisfied that by reason of special circumstances it would be unjust not to extend time. We accordingly decline to extend time.

IA/01353/2006

37. In this case, the decision was to remove the Applicant as an illegal entrant. The date of service of the decision is recorded on it as "*08/02/06*", and the deadline for appeal is given as "*24/02/06*"; those dates are also entered, evidently by the Respondent, on the form supplied to the Applicant to enable her to give notice of appeal. The method of service of the decision was by post, and it looks as though, in calculating the period allowed for an appeal, the person doing the calculation added the two days allowed for in-country postal service to 8 February before allowing ten further working days for the appeal to be lodged: assuming, as we must, that 8 February was in fact the date of service (as defined by Rule 55(5)), rather than the date on which the documents were posted, the result was to give the Applicant two days too much. The appeal was received on 24 February. It appears, for the reasons we have given, to be two days out of time, but was received within the time limited by the indication given by the Respondent in the notice of appeal and the appeal form. The Respondent has no power to extend time or to condone a late appeal, but it seems to us that a miscalculation by the Respondent which may have misled the Applicant is a special circumstance: and if the Applicant does indeed put in a notice within the time indicated by the Respondent, it would normally be unjust not to allow the appeal to proceed. We emphasise, as we did earlier in this determination, that it is unlikely that such a judgment would be made save on the clearest evidence of the Respondent's statement to the Appellant; but there is such evidence in this case. We extend time and order that this appeal proceed.

HX/00243/2006

38. The Applicant arrived in the United Kingdom on 22 February 2000 and claimed asylum. He was issued with a statement of evidence form on 18 March 2000 to complete and return by 1 April 2000 but failed to do so. On 20 May 2000, a decision was made refusing him leave to enter and refusing him asylum. Under the 1996 Procedure Rules he had seven days during which to appeal. His notice of appeal was received on 28 November 2000, some six months out of time. It was accompanied by a letter from his representative, the Immigration Advisory Service, containing the following:

> "As this is a late appeal notice, we would as[k] the Adjudicator to exercise his discretion, and allow this late notice. The lateness of the appeal was due to the negligence of our client's previous representative, who Mr Ian Coyne of Stanstead Immigration Office confirmed, had failed to submit the appeal on our clients behalf, when the refusal was served to them on the 18.06.00."

39. There is no other explanation for that last date.

40. In the 2000 Rules, which were in force by the time this notice was submitted, Rule 10 required the appeal bundle to be sent by the Respondent to the Adjudicator (whether or not the notice of appeal was given within the time limit specified). The Respondent sent the bundle to the Asylum and Immigration Tribunal under cover of a letter dated 27 February 2006. The letter gives no explanation for the lateness, unless the following is it:

> "Comments: There is no Refusal notice for appellant, and appeal form is completed in alias' name."

41. The appeal form is completed in the name described as that of the Appellant on the Respondent's appeal bundle front page, the asylum application referral sheet, the letter requiring a statement of evidence form to be returned, and a further letter sent to the Appellant, refusing his claim, on 20 May 2000. The covering letter also indicates that the Respondent treated this appeal as "*non-priority*". Perhaps that was why he took over five years to send these papers for judicial consideration.

42. The notice of appeal was very late. There is a partial explanation, partly supported by evidence. Although the grounds of appeal are rather weak, this is an asylum appeal. What makes it in our view truly exceptional is the Respondent's delay in sending the papers to the Tribunal. That delay, in the context of all the resources available to the Respondent and his frequent assertion of the need to deal with asylum cases promptly, would make it in our view wholly disproportionate and hence unjust to refuse to extend time in this case. We accordingly extend time and order that this appeal shall proceed.

C M G OCKELTON
DEPUTY PRESIDENT
Date: