



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

**Appeal Numbers:
UI-2022-003007 (EA/04114/2020)
UI-2022-003008 (EA/04115/2020)**

THE IMMIGRATION ACTS

**Heard at Field House
on 11 November 2022**

**Decision & Reasons Promulgated
On the 21 February 2023**

Before

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR
DEPUTY UPPER TRIBUNAL JUDGE MAILER**

Between

ENTRY CLEARANCE OFFICER

Appellant

and

**SAMUEL PAUL ONYEDIKACHI IROJIOGU-OBIOHA
DIVINE FAVOUR IROJIOGU
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the appellant: Ms S Lecointe, Senior Home Office Presenting Officer
For the respondents: The Sponsor, Mrs A Irojioгу-Obioha

DECISION AND REASONS

Introduction

1. We shall refer to the parties as they were before the First-tier Tribunal: thus, the Secretary of State is once more “the respondent” and the two original claimants are “the appellants”.
2. The respondent is seeking to appeal against the decision of First-tier Tribunal Judge M Cohen (“the judge”), promulgated on 30 March 2022. By that decision, allowed the appellants’ appeals against the respondent’s refusal of their applications for family permits under the Immigration (European Economic Area) Regulations 2016.
3. The appellants citizens of Nigeria. The first appellant is the sibling of the second. Both are minors. Applications for family permits were made under the 2016 Regulations in order for the appellant to join their mother (“the sponsor”) and her husband (not the appellants’ biological father) in the United Kingdom. The applications were refused and the appellants appealed to the First-tier Tribunal.
4. The appellant’s were represented before the judge, but not since.

Preliminary issue: timeliness

5. Through written submissions prepared with the assistance of a friend (which we have treated as a rule 24 response), the sponsor raised the issue of timeliness. Specifically, it was asserted that the respondent’s application made to the First-tier Tribunal for permission to appeal against the judge’s decision was late and that when granting permission, First-tier Tribunal Judge Povey overlooked this fact.
6. As this issue had not been raised previously, we gave time for Ms Lecointe to interrogate the respondent’s databases to see whether there was any further information available to her.
7. On resumption of the hearing, Ms Lecointe accepted that the application for permission had been, or at least appeared to have been, late and confirmed that there was no such information relevant to the issue of timeliness.
8. We are satisfied that the judge’s decision was in fact promulgated on 30 March 2022: the date is clearly marked on the face of decision itself. The notice of appeal to the First-tier Tribunal for permission to appeal confirms this date in section B.
9. We are satisfied that the application to the First-tier Tribunal for permission to appeal was not made until, at the earliest, 12 May 2022, that being the date of the notice.
10. Given that the appellants were outside of the United Kingdom, the relevant period for the making of an application for permission to appeal

was 28 days after the date on which the party making the application was “sent” the decision: rule 33(3) of the First-tier Tribunal’s Procedure Rules. Thus, the deadline was, on our calculation, 27 April 2022 (counting on 28 days from, and including, 31 March 2022).

- 11.** The respondent’s application was therefore 15 days late.
- 12.** In dealing with the issue of timeliness in the circumstances, we have directed ourselves to the case of Samir (FtT Permission to appeal: time) [2013] UKUT 3 (IAC). That dealt with the situation in which an application to the First-tier Tribunal for permission to appeal was late and included an application to extend time. However, the judge considering the application for permission had failed to deal with the timeliness issue. The Upper Tribunal concluded that in the circumstances, the grant of permission was “conditional” and that the issue of timeliness would have to be addressed. This would be by way of an Upper Tribunal Judge sitting as a First-tier Tribunal Judge and deciding whether it was in the interests of justice to admit the application for permission. In considering those interests, all relevant matters would be taken into account.
- 13.** The facts of the present case differ somewhat in that Judge Povey expressly stated that the application was “in-time”. In our judgment, this does not mean that the conclusions in Samir are inapplicable. As a matter of demonstrable fact, Judge Povey was wrong to have stated that the application was “in-time”. It cannot sensibly be said that he was simply waiving a basic requirement of the Procedure Rules, nor is it the case that he was granting an extension of time. There had in fact been no such application and, in any event, being “in-time” is, by definition, exclusionary of a need for such an extension.
- 14.** We apply the approach set out in Samir.
- 15.** The application to the First-tier Tribunal for permission was just over two weeks’ late. That is a relatively significant period of time. Procedural rigour is extremely important and making applications within relevant deadlines is an integral aspect of that consideration.
- 16.** The respondent made no attempt to make an application for extension of time when lodging her application for permission to appeal: section B of the notice (relating to time limits and possible applications for an extension of time) stated “Not applicable”. It follows, of course, that there was no explanation for the delay.
- 17.** In the period between the grant of permission in late June 2022 and the hearing before us, the respondent has made no belated application for an extension of time. Ms Leconte did formally (and somewhat tentatively) make such an application at the hearing, but we had no hesitation in refusing it. Without criticising her personally, not only was that application as late as it could possibly have been, but there has still been no

explanation whatsoever for the original delay of 15 days. The absence of any attempt to explain the delay is a crucial factor in our consideration.

- 18.** We have taken account of the obvious upset caused to the sponsor and her husband by these proceedings and what they perceive as the unfairness of the respondent's conduct in general. In addition, we acknowledge that there is a degree of merit in the respondent's ground of challenge against the judge's decision. However, in the particular circumstances of this case, this factor alone does not warrant us extending time and admitting the application for permission.
- 19.** In summary, we conclude that it is not in the interests of justice to extend time and admit the respondent's late application for permission to appeal against the judge's decision. That application is not admitted.
- 20.** It follows that there is no appeal pending before the Upper Tribunal.
- 21.** As a postscript, the appellants are currently in the United Kingdom, having been issued with multi-entry visit visas. It appears as though they entered this country on 4 October 2022. This fact did not render their appeals abandoned under section 104(4A) of the Nationality, Immigration and Asylum Act 2002, as amended. That is because they were not in United Kingdom when their appeals under section 82(1) were lodged.

Notice of Decision

- 22. The respondent's late application for permission to appeal is not admitted and there is no appeal pending before the Upper Tribunal.**

Signed: H Norton-Taylor

Date: 15 November 2022

Upper Tribunal Judge Norton-Taylor