

SPECIAL IMMIGRATION APPEALS COMMISSION

Field House,
Breams Buildings
London
EC4A 1WR

Thursday, 25th July 2013

BEFORE:

**THE HONOURABLE MR JUSTICE IRWIN
UPPER TRIBUNAL JUDGE PERKINS
SIR BRIAN DONNELLY**

BETWEEN:

H2

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

BARONESS KENNEDY QC and MR F SAIFEE (instructed by HMA Solicitors) appeared on behalf of the Appellant.

MS L GIOVANNETTI QC and MS K GRANGE (instructed by the Treasury Solicitor) appeared on behalf of the Respondent.

MS J FARBEY QC (instructed by the Special Advocates Support Office) appeared as Special Advocate.

**PRELIMINARY ISSUE
RULING**

MR JUSTICE IRWIN:

1. We have listened carefully through the day and following the helpful submissions this afternoon, considering the progress of the case so far and the evidence we have heard.
2. The relevant Rule within the SIAC Procedure Rules 2003, dealing with time for appealing to SIAC is Rule 8, which stipulates a period of 28 days for lodging an appeal to SIAC, if the appellant is abroad, as was this appellant. Rule 8(5) reads:

"The Commission may extend the time limits in this Rule if satisfied that, by reason of special circumstances, it would be unjust not to do so".

3. If the notice were validly served on the appellant - one of the issues before us - then the appellant would seek an extension of time of 21 days to appeal, pursuant to Rule 8(5). The Rule has very recently come under consideration in the Court of Appeal in the embargoed case *LI -v- Secretary of State for the Home Department* [2013] EWCA Civ 550. We are very grateful to the court and to Ms Farbey QC for getting us sight of that decision. The Court of Appeal in that case, it appears to all of us, encourages a somewhat broader approach to the exercise of discretion under Rule 8(5), particularly where the question of service is in issue.
4. We have also been assisted by the case of *Ogundimu -v- Secretary of State* [2013] UKUT 00060 (IAC), a decision of Blake J and Upper Tribunal Judge O'Connor, which addresses a similar question in the context of the Immigration Rules. The Tribunal Procedure Upper Tribunal Rules 2008 do not have language which is identical to the SIAC Rules, but the considerations are similar. By Rule 2, those Rules specify that the powers under those Rules must be exercised having regard to the overriding objective of dealing with cases "fairly and justly". The SIAC Procedure Rules do not contain such an overriding objective, but that hardly matters. We do not need an objective such as that to be written into the Rules. We will adhere to the objective in any event.
5. In a helpful passage, the Upper Tribunal said this:

"Factors relevant to the exercise of discretion to extend time under Rule 5(3)(a) of the 2008 Rules will include, but are not limited to

- (1) the length of any delay;
- (2) the reasons for the delay;
- (3) the merits of the appeal; and
- (4) the degree of prejudice to the respondent if the application is granted.

The merits of the appeal cannot be decisive (see the reasons given in *Boktor and Wanis* [2011] UKUT 00442 (IAC))."

6. A broadly similar approach was taken in another helpful case, that of *BO and Others (Nigeria) and The Entry Clearance Officer Lagos*, [2006] UKAIT 00035. There are helpful dicta in that case, where the language of the rules under consideration was identical to the language in the SIAC Rule with which we are concerned.

7. None of this must be taken to indicate that rules of time are unimportant or that breach of the rules may not lead to the dismissal of an appeal.
8. Having considered all these matters, together with the facts of the case, we have concluded that in this case we should give no ruling on the preliminary issues we have heard, but reserve the ruling. We intend to proceed to hear the issue of statelessness. We will then rule on all matters simultaneously. On the facts of this case, that seems to us the just and fair approach. This is absolutely not a precedent for other cases, but is a decision based on the facts here. It is entirely feasible that we may yet decline to extend time for an appeal even if we find that the notice was properly served.
9. All parties will need to consider that and, in particular, the necessary directions for dealing with the issue of statelessness in due course. I think we think that it would be premature to ask everyone to consider that this afternoon. It is a discrete issue. It clearly is, principally, a legal issue. It appears to us that it will be properly triable without any direct input from the appellant himself, but, clearly, Baroness Kennedy, you and those who instruct you will have to consider that.