



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

Appeal Number: IA/49819/2013

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court

Determination

On 4th July 2014

Promulgated

On 10th July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR MUHAMMAD IRFAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Richard Martin (Counsel)

For the Respondent: Mr Neville Smart (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge V Woolf promulgated on 7th February 2014, following a hearing at Arnhem House on 6th February 2014. In the determination, the judge dismissed

the appeal of Muhammad Irfan, who applied for, and was subsequently granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, who was born on 12th August 1987. He appealed against the decision of the Respondent dated 12th November 2013 to remove him from the United Kingdom. The Appellant lodged an appeal with the Tribunal without Grounds of Appeal. The Notice of Appeal gave the Appellant's address as, "The McLaren Building, 46 The Priory, Queensway, Birmingham, United Kingdom, B4 7LR". Directions were thereafter issued on 4th December 2013, and sent by post to him, at the address given, requiring the Appellant to submit his Grounds of Appeal to the Tribunal by 11th December 2013. The Appellant was put on notice that a failure to comply would result in the appeal being dismissed without a hearing under the provisions of Rule 15(2)(c) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. The notice, however, was returned by post endorsed "not known at this address".
3. It was in these circumstances, that the matter arose before Judge Woolf.

The Judge's Findings

4. The judge applied Rule 56(2) of the 2005 Procedure Rules, which was to the effect that, "until a party or representative notifies the Tribunal of a change of address, any documents served on him at the most recent address which he has notified to the Tribunal shall be deemed to have been properly served on him" (see paragraph 1 of the determination). Since the Appellant had not notified the Tribunal of the change of address, Judge Woolf went on to apply Rule 15(2)(c) of the 2005 Rules and to dismiss the appeal without a hearing. On 14th May 2014, permission to appeal was granted on the basis that the Appellant had argued in his Grounds of Appeal, following the determination of Judge Woolf, that he did not receive any letters sent out by the Tribunal either directly or to his representative, and did not have a copy of the determination. That being so, permission to appeal was granted on the basis that there may have been procedural unfairness to the Appellant.

The Hearing

5. At the hearing before me on 4th July 2014, Mr Martin, appearing on behalf of the Appellant, who also attended court, stated that the address of "The McLaren Building, The Priory," is actually the address of barristers' chambers known as "Equity Chambers". It is not the address of the Appellant at all. However, had the letter been addressed to "Equity Chambers" on 4th December 2013, it was conceivable that it would have gone to lawyers who would then have been able to submit Grounds of Appeal. Given that it went to the building as such, which houses a number of other enterprises as well, it was bound to have been returned to the

Tribunal unserved. This is the reason why the Appellant was unable to furnish the Grounds of Appeal. This was the reason why nobody else was able to furnish the Grounds of Appeal on his behalf. Mr Martin directed my attention to the recent determination of **MM (unfairness; E & R) Sudan [2014] UKUT 00105**, where the judgement of Mr Justice McCloskey was to the effect that where there was a defect or impropriety of a procedural nature in proceedings at first instance, the material error could lead to the decision of the First-tier Tribunal being set aside. This was especially the case where material evidence, through no fault of the First-tier Tribunal, was not considered, resulting in unfairness.

6. For his part, Mr Smart submitted that he would have to agree with Mr Richard Martin because neither he, on behalf of the Home Office, nor the Appellant's representatives, actually had the original appeal form, so it was not clear who had been representing the Appellant. In fact, the Home Office records showed that no one was representing the Appellant. On 28th August 2013, the Home Office had written a letter to the Appellant, but the Tribunal had clearly written the notice to the wrong address. In the circumstances, it was accepted that there was unfairness to the Appellant.

Error of Law

7. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside that decision. My reasons are quite simply that the Appellant was not sent the notice by the Tribunal because it went to the wrong address, and that address in itself was incomplete so that no one representing him could respond to the request from the Tribunal. This has caused a procedural unfairness to the Appellant.

Decision

8. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the First-tier Tribunal. I remit this matter back to the First-tier Tribunal in accordance with Practice Statement 7.2 so that it can be determined de novo by a judge other than Mrs V Woolf. I give directions that the Appellant is to have seven days from the date of promulgation of this determination in which to file full and comprehensive Grounds of Appeal such as to enable his appeal to be determined on the basis of the grounds submitted. These grounds must be filed and served so that the Home Office also has a copy of the grounds.
9. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

9th July 2014