



IAC-AH-CJ-V1

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

Appeal Number: IA/50478/2013

THE IMMIGRATION ACTS

Heard at Field House

On 28 October 2014

**Decision & Reasons
Promulgated**

On 7 November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**MR LOXLEY ALPHONSO BEECH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Turner (Direct Access Immigration)

For the Respondent: Mr S Allen (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This matter comes before me for consideration as to whether or not there is a material error of law disclosed in the determination. The determination promulgated on 24 July 2014 before First-tier Tribunal (Judge Buckwell) dismissed the appeal on immigration grounds and on human rights grounds.

2. The appellant was born on 16 March 1970 and he is a citizen of Jamaica.

Background

3. The appellant appealed against a decision made by the respondent on 21 November 2013 to make a deportation order against him under Section 5(1) of the Immigration Act 1971.
4. The appellant entered the UK on 10 October 1990 having been granted six months leave as a visitor. That leave expired on 10 April 1991. On 17 April 1991 the appellant applied for leave on the basis of marriage to Janet Palmer who was a British citizen. Leave was initially granted until 2 January 1993. A further application for indefinite leave was refused on the basis that it was not believed that the marriage was subsisting. The appellant applied for asylum on 25 May 1996. His application was withdrawn on 17 July 1996. He was informed on 8 August 1996 that a deportation order was being considered and asked to provide further information. A decision to make a deportation order was served on the appellant on 8 July 1998 and an appeal dismissed on 10 May 1999. A subsequent Upper Tribunal appeal was dismissed and the appellant absconded. At some point the appellant left the UK but returned on an unknown date having travelled to Jamaica on 1 February 2008 using a fraudulent passport in the name of Zane Cain. On 8 December 2011 he was served with a notice as an individual liable to removal. On 12 December 2011 he was convicted for possession of false or improperly obtained documents and sentenced to six months imprisonment.
5. It was the appellant's claim that he lived continuously in the UK since 1990 and established family life with a Maria Clunis and with his children. He claimed that he has established a private life in the UK.
6. The case for the Secretary of State was that the appellant posed a serious risk to the community, that he should not be granted further periods of leave and that his removal from the UK was conducive to the public good. He had been convicted on three occasions. He used false identities and displayed unacceptable character and conduct. The respondent relied on evidence from the police who provided a long list of criminal behaviour including where no charges were preferred.
7. Neither the appellant nor his representative attended for the First-tier hearing on 27 June 2014 at Taylor House. The respondent was represented. The Tribunal proceeded to hear the appeal in the absence of the appellant and his representative.
8. The determination set out the procedural history as follows. There was a Case Management Review (CMR) hearing before the First-tier Tribunal Designated Judge Peart on 20 February 2014 followed by a further Case Management Review hearing on 21 May 2014. At that time the date for the full hearing was 27 June 2014. The determination records at [3]:

“Whilst a substantive hearing date of 27 June 2014 remained in place, the Tribunal file indicated that potentially an alternative date might be fixed. In that respect the file shows that attempts were made to make contact with the representatives and with Counsel direct. There was no response. Accordingly no further notice of hearing was issued and the notice of hearing issued on 27 February 2014 stands.”

9. Further consideration was given by the Tribunal to the arrangements for the hearing of the appeal in [16]-[20]. The Tribunal referred to Rule 46 Asylum and Immigration Tribunal (Procedure) Rules 2005 and concluded that appropriate notice had been served on the parties and that there was no basis for any party to believe or expect that the notified hearing date of 27 June 2014 would not be effective. The Tribunal were urged to proceed with the hearing by the respondent’s representative. The Tribunal found that the notices of hearing issued on 27 February 2014 were valid and remained valid. The Tribunal referred to Rule 19(1) of the 2005 Procedure Rules and proceeded to hear the appeal in the absence of the appellant and any representative.
10. In a clear and detailed determination the Tribunal set out in detail the procedural history of the appeal, the appellant’s immigration history, the nature of the appeal, documentation, arrangements for the hearing of the appeal, submissions, evidence of DC Petrov together with the law and findings of fact and conclusions.

Grounds of Appeal

11. The appellant submitted grounds of appeal seeking either permission to appeal or an order setting aside the decision under Rule 59 of the Asylum and Immigration Tribunal (Procedure) Rules 2005. The grounds of appeal argued that there was a procedural irregularity. At the CMR Counsel for the appellant understood that the hearing dated 27 June 2014 had been vacated. This was the understanding of the appellant also. Details of the procedural history according to the appellant were set out at length in the grounds of appeal.

Permission to Appeal

12. First-tier Tribunal Judge Chambers granted permission on 23 September 2013 concluding that the grounds arguably disclosed an administrative error or error of law depriving the appellant of a fair hearing.

Rule 24 Response

13. The respondent opposed the appeal.

Error of Law Hearing

14. I heard brief submissions from Mr Turner and from Mr Allen concerning in particular the procedural history in this matter in the First-tier Tribunal. Mr Allen confirmed that he represented the Secretary of State at the CMR hearing on 21 May 2014. He confirmed that his note on the file recorded that “the hearing dated 27 June 2014 was vacated”. He produced a further note confirming that Mr Paul Turner of Counsel was acting by way of Direct Access for the appellant. He referred to a further note made by him again confirming his clear understanding that the hearing for 27 June had been vacated. He accepted that no official formal notification had been received from the Tribunal to that effect.
15. Mr Turner relied on the grounds of appeal and the confirmation made by Mr Allen as to the agreement reached at the CMR on 21st May. He indicated that the appellant and his witnesses were in attendance at the Upper Tribunal and that he was prepared for the hearing to proceed.

Discussion and Decision

16. I have read the detailed grounds of appeal and have been helpfully assisted by the brief submissions given this afternoon by Mr Allen. I am satisfied that Mr Allen recorded his clear understanding of what took place at the CMR hearing, namely that the hearing fixed for 27 June 2014 was vacated. Whilst I appreciate that it would appear no further notice of hearing was sent out to alter that date, it was the clear understanding of the Home office presenting officer, Mr Turner and the appellant that that date had been vacated. Without more I am satisfied that there is sufficient evidence before me to establish that for whatever reason there was a misunderstanding arising at the CMR on 21st May as to whether or not the hearing date was vacated. The Tribunal file records that there was some possibility that an alternative date would be arranged but failure to make contact with the relevant parties resulted in no new Notice of hearing being issued [3]. It is not clear why the Tribunal considered that an alternative date for listing was to be considered. There may have arisen some miscommunication because Mr Turner was acting by way of direct access and so the representatives were no longer in the picture following the CMR.
17. Throughout these proceedings the appellant has been represented by Mr P Turner – on 20 February 2014, and on 21 May 2014. The notice of hearing giving the date for 27 June 2014 was issued on 27 February 2014 prior to the CMR hearing on 21 May 2014. In light of Mr Turner’s understanding at the CMR hearing (which has now been confirmed by Mr Allen), I find that Mr Turner would have no reason to expect that the notice of hearing issued on 27 February 2014 would be regarded as valid and the hearing effective.
18. The determination does not record any attempts to contact either the appellant or Mr Turner direct on the day of the hearing. Counsel submits

that some contact was made with his clerk who then followed up by a faxed letter attaching counsel's attendance note for the CMR indicating that the date was vacated.

19. I find that there was a material error of law in the Tribunal's decision that arose by way of procedural irregularity such that the hearing proceeded in the absence of him and his representatives. I am satisfied that the appellant was deprived of the opportunity of a fair hearing. He indicated his wish for an oral hearing, an intention to attend and was throughout legally represented. He has an arguable case under Article 8 ECHR. Furthermore he did not have the opportunity to challenge the oral evidence given by DC Petrov.
20. Although Mr Turner was ready to proceed with the hearing before the Upper Tribunal, it was clear that this case was complex and required the attendance of a police officer. It would require listing for at least half a day in my view. I had regard to the President's practice statement and considered that the only course of action was a hearing de novo.

Notice of Decision

I find a material error of law by way of procedural irregularity.

The determination is set aside.

The appeal is listed for hearing de novo at Taylor House (excluding Judges Buckwell and Peart) on 8 April 2015.

No anonymity order made

Signed

Date 6.11.2014

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT **FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 6.11.2014

Deputy Upper Tribunal Judge G A Black