



**Upper Tribunal
(Immigration and Asylum Chamber)**
DA/01501/2014

Appeal Numbers:

THE IMMIGRATION ACTS

**Decided at Field House
5 November 2014
No Hearing**

**Promulgated on
7 January 2015**

Before

UPPER TRIBUNAL JUDGE LATTER

Between

MARCELO MARTINA

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. On 22 October 2014 the following directions were issued to the parties:

1. The appellant is a Dutch citizen who appealed against the respondent's decision to make a deportation order. His appeal was dismissed on the basis that he failed to include any grounds of appeal in his notice of appeal. On 5 August 2014 he was served with a notice that the grounds must be submitted by 12 August 2014 and that failure to comply might result in the appeal being dismissed without a hearing.

2. On 1 September 2014 his appeal was so dismissed on the basis that nothing further had been heard from him and no grounds of appeal had been received.

3. Permission to appeal was sought on the basis that the grounds had been submitted under cover of a letter dated 7 August 2014 sent by first class post. Permission to appeal was granted on 17 September 2014 the judge commenting that it was arguable that grounds had in fact been submitted within the time limit provided by the Tribunal.

4. In the Rule 24 response from the respondent it is indicated that the application for permission to appeal is not opposed and that if grounds were lodged, the appeal must be considered substantively.

5. Whilst it does appear to be the case that the grounds did not come to the attention of the judge who dismissed the appeal, the appellant has attached to his grounds of appeal to the Upper Tribunal a copy of the grounds and the covering letter dated 7 August 2014. There is, therefore, evidence to support the contention that grounds were sent to the Tribunal within the time limit set out in the relevant notice.

6. It is my preliminary view that this is an appeal which can properly be determined without a hearing on the basis that there has been a procedural irregularity causing injustice, that the decision should be set aside and the appeal be remitted to the First-tier Tribunal for a full hearing.

7. I direct that any representations to the contrary are to be filed with the Upper Tribunal within 14 days of the date of these directions a copy being served on the other party. The directions sent to the parties on 22 September 2014 are set aside.

2. There have been no representations to a contrary received from either party. In these circumstances I am satisfied that the proper course is to determine this appeal on the papers. I am satisfied that there has been a procedural irregularity amounting to an error of law in that the appellant's representatives did submit grounds within the relevant time period. I therefore set aside the decision. In the light of all the circumstances I am satisfied that this is a proper case for the appeal to be remitted to the First-tier Tribunal for a full reconsideration.

Decision

3. The First-tier Tribunal erred in law such that its decision should be set aside. The appeal is remitted to the First-tier Tribunal for a full hearing.

Signed

Date 25 November 2014

Upper Tribunal Judge Latter