



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/16908/2013**

THE IMMIGRATION ACTS

Heard at: Field House

**Decision and Reasons
Promulgated**

On: 19 February 2015

On: 3 March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

**MR RUHEL AHMED
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER:

Respondent

Representation

For the Appellant: Mr A Rahman, Legal Representative (Jallabad Law Associates)

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Bangladesh, born on 22 March 1981. His application for an entry clearance to visit his brother in the UK was refused by the respondent on 23 July 2013.
2. In a determination promulgated on 22 October 2014, First-tier Tribunal Judge Russell dismissed the appellant's appeal under the Immigration Rules. The appellant lodged his appeal on 25 November 2013.
3. It was stated at section B of the application for permission to appeal that if the appellant before the First-tier Tribunal is outside the UK, the application must be received 28 days after the date on which he was

provided with written reasons for the decision. The application was served late.

4. The reasons given as to why the application was made late are set out at Section B in the application form as follows:

“due to transitional period of new rules, and the fact that the client is overseas, the duty Judge should allow the interests of justice to be met. Therefore, the appellant seeks permission for the appeal to be granted despite it being made a couple days out of time.”

5. On 9 January 2015, First-tier Tribunal Judge Colyer granted the appellant permission to appeal. There was in fact no consideration given in that decision to the fact that the application was received out of time. Nor was any consideration given to the reasons for the out of time application.
6. Mr Wilding contended that the application had been made out of time and that there had been no decision made to extend time. Accordingly the application for permission was not in accordance with paragraph 33 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.
7. It is provided that where the appellant is outside the U.K. an application to the Tribunal seeking permission to appeal to the Upper Tribunal must be received no later than 28 days after the date on which the party making the application was provided with written reasons for the decision.
8. He submitted that it is clear that time was not extended and in fact had not even been considered by the Judge granting permission to appeal.
9. Mr Wilding relied on the decision of Upper Tribunal Judge Allen in Boktor and Wanis [2011] UKUT 442 (IAC). That decision was to the effect that where permission to appeal to the Upper Tribunal has been granted in circumstances where the application is out of time, and an explanation is provided but is not considered by the Judge granting permission, in the light of AK (Tribunal Appeal - out of time) Bulgaria [2004] UKIAT 00201 (starred) and the clear wording of the relevant rule, the grant of permission to appeal is conditional and the question of whether there are special circumstances making it unjust not to extend time has to be considered.
10. In Samir (FtP Permission to Appeal: Time)[2013] UKUT 3 (IAC), the Upper Tribunal stated that in a case where following Boktor and Wanis, supra, a grant of permission has to be regarded as conditional upon a decision where the time should be extended, the latter decision is part of the original decision on the application. If the application was to the First-tier

Tribunal, the decision as to time is therefore made by the First-tier Tribunal, and if the application is not admitted, there is the possibility of renewal to the Upper Tribunal.

11. Mr Wilding submitted that two reasons were given as to why permission was late. One related to the transitional period of the new rules and the other the fact that the appellant is overseas.
12. He submitted that no change with regard to time periods had been effected under the 2014 Rules. It is common ground that the application was submitted 2-3 days late. Accordingly, the application itself accepts that it has been made out of time and no other reasons are given.
13. In the circumstances, he submitted that there is no proper reason disclosed to extend time. The deadline for the lodging of the application, namely 28 days, "was ample." The procedure rules envisage people appealing from abroad. Hence, 28 days is given.
14. Accordingly, the appellant has not established or shown any good reason to extend time. He submitted that there must be a finality of decision making. The appellant has a remedy to apply to the Upper Tribunal.
15. Mr Rahman submitted that it is correct that the application was lodged out of time. He submitted that under the 2005 Rules, the appellant was entitled to have 56 days for lodging an appeal.
16. Further, 'the client is overseas'. Promulgation took place on 22 October 2014. The rules changed two days prior to that. Accordingly, "you are entitled to allow a couple of days out of time."
17. During the course of his submissions, Mr Rahman confirmed that he had represented the appellant at the hearing before the First-tier Tribunal. He stated that on receipt of the decision he had to read the rules. There were telephone calls between the appellant and his firm. The appellant was aware that his appeal had been dismissed. He had given instructions to apply for permission to appeal. In the circumstances, he submitted that a satisfactory explanation had been given for the exercise of discretion to extend the time period.
18. In reply, Mr Wilding submitted that 28 days was the relevant period, not 56 days. The notice itself informed the appellant that he only had 28 days. He referred to the Asylum and Immigration Tribunal (Procedure) Rules 2005 which provided at paragraph 24(3) that where an appellant is outside the UK, the time limit for sending a written application for permission to appeal is 28 days.

Assessment

19. It is evident that the First-tier Tribunal Judge who granted permission did not make a decision or give any consideration as to whether or not it was appropriate to grant an extension of time in the circumstances, despite the fact that it was accepted and noted in the application for permission itself that it was out of time.
20. There was no suggestion that there had been an implicit extension of time. There is accordingly no evidence that the Judge exercised any discretion involved in extending time.
21. I have had regard to the two reasons given by Mr Rahman. There has been no attempt to provide any further evidence or make any further submissions beyond the contention that the application was submitted late "due to transitional period of new rules." That contention has no merit. The application itself expressly pointed out that it must be received 28 days after the date on which the reasons for the decision were provided. It is accepted that the date was 22 October 2014.
22. In any event, the 2014 Rules do not substantially differ from the 2005 Rules with regard to the 28 day time period. Mr Rahman has stated that there were several telephone calls between his office and the appellant. The appellant was aware that his appeal had been dismissed. Mr Rahman had been instructed on his behalf before the First-tier Tribunal. It appears that his instructions continued after the appellant's decision was refused.
23. There has been no explanation given as to why the application could not have been lodged well within the 28 day period. It was the solicitor himself who filed the form on behalf of the appellant. It is also signed by the solicitor.
24. In the circumstances, I do not find that the delay by his representatives in these circumstances constitutes a proper explanation for the lateness of the notice. Apart from the two assertions made in the application for permission itself there has been no evidence produced explaining the delay, either by the appellant or his representatives as to why the application could not have been prepared well before the expiry of 28 days. I have had regard to the consequences of the decision and the prejudice to the appellant. Taking all these matters as a whole, I am not satisfied that by reason of special circumstances, it would be unjust not to extend time.

Decision

The time for applying to the First-tier Tribunal for permission to appeal is not extended. The application is not admitted.

No anonymity direction is made.

Signed
March 2015

Deputy Upper Tribunal Judge Mailer

Dated: 1