



IAC-FH-AR-V1

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

Appeal Number: IA/47699/2014

THE IMMIGRATION ACTS

Heard at Field House
On 9 December 2015
**Oral determination given following
hearing**

Determination Promulgated
On 14 January 2016

Before

**UPPER TRIBUNAL JUDGE CRAIG
UPPER TRIBUNAL JUDGE S. STOREY**

Between

TAHIR HAFEEZ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Basharat, Counsel, instructed by UNQ Immigration Ltd

For the Respondent: Mr S Kandola, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant in this case is a national of Pakistan who was born on 25 April 1979. He arrived in this country on 14 June 2011 as a student with leave to remain until 21 July 2014. The college at which he was enrolled lost its status and was effectively closed down by the UK Borders Agency. He accordingly brought an application for leave to remain outside the Rules under Article 8 on the basis that his Article 8 rights to respect for a private life would be violated if he was required to return to Pakistan. That

application was made prior to the expiration of his current leave. The application was refused by the respondent but the respondent did not certify the claim as being clearly unfounded although it would have been open to the respondent to have done so. Accordingly the appellant had a statutory right of appeal against that decision.

2. The appellant exercised that right and although he initially asked for the appeal to be considered on the papers his previous legal representatives then wrote to the Tribunal requesting an oral hearing which was something he was entitled to provided he paid the appropriate fee. The procedure following the making of this application should have been that the First-tier Tribunal would have written to him requesting the fee but it never did so. The reason it never did so, and I am told has still not done so, is because although the correspondence requesting an oral hearing was undoubtedly served on the Tribunal (and it is not suggested on behalf of the respondent that it was not) that correspondence got mislaid as regrettably happens from time to time even in the best run organisation.
3. The consequence was that the appeal was considered by First-tier Tribunal Judge Flower on the papers at Birmingham Sheldon Court on 11 March 2015 and in a determination promulgated on 16 March 2015 the appellant's appeal was dismissed.
4. The appellant's new solicitors then wrote to the First-tier Tribunal inviting the First-tier Tribunal to set aside the decision which had been made on the papers on the basis that there had been a procedural irregularity but the Tribunal refused to do this and required the appellant to seek permission to appeal against the decision which had been made to the Upper Tribunal, which he did.
5. Permission to appeal was understandably and properly granted by First-tier Tribunal Judge A K Simpson on 17 July 2015. In setting out her reasons for granting permission Judge Simpson stated as follows, at paragraph 4:
 - "4. I have the representatives' copies of the letters that were sent to the First-tier Tribunal in Leicester and the originals do appear in the appellant's file date stamped 12 February 2015 and with the correct hearing number. For an unknown reason this letter subsequently found its way to Castle Park Storage on 24 March 2015 and there is nothing on the file itself to indicate that it was ever actioned. Clearly this appeal should not have proceeded as a 'paper appeal'. In any event, in proceeding to deal with the appeal 'on the papers' the judge has denied the appellant the opportunity to present further evidence and/or argument."
6. In our judgment Judge Simpson was undoubtedly right to grant permission to appeal and was also undoubtedly right in stating that "clearly this appeal should not have proceeded as a 'paper appeal'".
7. On behalf of the respondent before us Mr Kandola submitted that there was still a question to be determined as to whether or not the error of law

which he did not dispute had occurred, was a material one. In our judgment it must have been because the appellant, however weak his case may have been, was entitled to exercise his statutory right of appeal and included within that right was the right to have it determined at an oral hearing. Had the respondent certified his claim as being clearly unfounded, he would not have had a right of appeal but in the absence of such certification he did, and this included is right on an oral hearing, of which he has been deprived. Accordingly the only proper course open to us is to remit the appeal back to the First-tier Tribunal for it now to be heard before any judge other than First-tier Tribunal Judge Flower and we shall so order.

8. On the face of the papers which we have seen, the appellant's case does not appear to be a strong one, to say the least, and we would hope that an early listing could be obtained because it cannot be in anyone's interests for the appellant in these circumstances to have to wait any longer than is necessary for his appeal to be properly determined.

Decision

We set aside the decision of First-tier Tribunal Judge Flower as being vitiated by a procedural error, and direct that the appeal be remitted to the First-tier Tribunal sitting at Birmingham for rehearing before any judge other than First-tier Tribunal Judge Flower.

Signed:

A handwritten signature in black ink, appearing to read "Ken Craig". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Upper Tribunal Judge Craig

Date: 16 November 2015