



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02707/2017

THE IMMIGRATION ACTS

Heard at Glasgow
on 10 August 2017

Decision & Reasons Promulgated
on 11 August 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

FAIZ AHMAD

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr G Ahmed, of Anderson Rizwan, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. First-tier Tribunal Judge R Sullivan dismissed the appellant's appeal by a decision promulgated on 18 April 2017.
2. The judge explains at ¶10 - 12 that he decided to proceed with the hearing on 10 April 2017 in absence of the appellant and of his representatives, there having been no message or communication to explain their failure to attend, and no application for an adjournment or for a transfer to another venue.
3. The grounds of appeal to the UT say that the appellant's representatives had sent a letter dated 28 March 2017 requesting an adjournment and a change of venue, which had clearly not been placed before the judge, and this led to the appellant not receiving a fair hearing.
4. The FtT refused permission, on the view that the adjournment had not been granted, and so the appellant and his representatives should have been prepared for the hearing to go ahead, and the judge was entitled to proceed as he did.
5. On renewal, the UT granted permission, on the view that there had arguably been error or unfairness.

6. There was a procedural mishap in that the letter of 28 March 2017 was not linked to the file for the attention of a judge prior to or even at the hearing date.
7. Such a mishap does not always disclose procedural unfairness. The request for adjournment and transfer was a reasonable one, which might sensibly have been decided either way; but the professional duty of representatives is always to prepare on the assumption that such applications are not granted, and that hearing dates and venues stand, unless and until the court or tribunal advises otherwise.
8. There was perhaps no fault by the appellant personally, but parties are generally fixed with the actions of their representatives, because the machinery of justice would otherwise be unworkable.
9. The notice of appeal to the FtT was faxed by the appellant's current representatives to the FtT on 17 March 2017, with a covering letter asking for listing at Glasgow and not at Harmondsworth. The letter mentioned that the appellant had been resident with his wife (an obvious likely witness) in Scotland, and that his appeal was funded by the Scottish Legal Aid Board. By the time of the hearing, the appellant had been released from detention and returned to Scotland. In those circumstances, taken with the procedural mishap, Mr Matthews, very fairly, conceded that this became a borderline case, in which it might properly be said that there had been procedural unfairness.
10. Accordingly, although only by a narrow margin, I find that procedural unfairness inadvertently occurred, such that the appellant should have the opportunity of a further hearing.
11. The decision of the FtT is **set aside**.
12. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to **remit the case to the FtT** for an entirely fresh hearing.
13. The member(s) of the FtT chosen to consider the case are not to include Judge R Sullivan.
14. No anonymity direction has been requested or made.



10 August 2017
Upper Tribunal Judge Macleman