



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/13501/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Bradford  
Promulgated  
On 21 June 2017**

**Decision & Reasons  
On 1 August 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BAGRAL**

**Between**

**[R T]**

**~~(ANONYMITY DIRECTION NOT MADE)~~**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Miss B Morjaria, of Counsel, instructed by UK Law

For the Respondent: Mr N Brambles, Home Office Presenting Officer

**DECISION AND REASONS**

**Anonymity**

1. The First-tier Tribunal did not make an anonymity order. The Appellant has not sought an order. I consider that there are no reasons to justify an order so none is made.

**Background**

2. The Appellant has been granted permission to appeal to the Upper Tribunal from the decision of First-tier Tribunal Judge Cary (hereafter “the judge”), whereby he dismissed her appeal against the decision of the Secretary of State refusing to recognise her as a refugee or otherwise requiring international protection.
3. The Appellant is a citizen of Ethiopia born [ ] 1987. She arrived in the UK on 26 May 2016 and claimed asylum on the basis that she is an ethnic Oromo and her father had been detained by the authorities as a member of the Oromo Liberation Front. The Respondent rejected the claim and the Appellant’s appeal against that decision was listed for oral hearing before the judge on 6 January 2017. The Appellant did not attend the hearing and the judge heard the appeal in her absence. The appeal was dismissed in a decision promulgated on 13 January 2017 essentially because the credibility of the claim was found wanting.

### **The Application for Permission to Appeal**

4. The Appellant’s representatives applied on her behalf for permission to appeal to the Upper Tribunal on the basis that she had been denied a fair hearing, and that the judge erred in reaching his adverse findings. Permission was granted by the First-tier Tribunal on 11 April 2017.

### **The Hearing in the Upper Tribunal**

5. At the hearing before me, after hearing submissions from both representatives, I set aside the decision of the First-tier Tribunal for the following reasons.

### **Decision on Error of Law**

6. I am satisfied that the decision of the First-tier Tribunal is vitiated by a procedural irregularity and cannot stand.
7. The judge heard the appeal in the Appellant’s absence by virtue of her non-attendance. The judge noted a Notice of Hearing stipulating the time, date and venue of the hearing had been sent to the Appellant c/o her representatives, that being the address given in the Notice of Appeal, and separately to her representatives. The judge called on his clerk to telephone the representatives and the message communicated to the judge via the clerk was that the representatives “... *did not know what was happening about the case but that they would telephone back. They did not do so prior to the commencement of the hearing.*”
8. The Appellant and her representatives contend that they did not receive the Notice of Hearing. The judge records that the Notice of Hearing had been sent to the Appellant and to her representatives on 7 December 2016. He does not refer to the method of service used by the Tribunal to effect service. A close inspection of the various notices on the Tribunal’s file indicate that, whilst a notice requiring the Appellant to pay a fee was sent to her and to her representatives by first class post on 7 December

2016, the Notice of Hearing stipulating the date, time and venue of the hearing was served on the Respondent by first class post, but on the Appellant and her representatives by "EM". Through my enquiries with the Tribunal's administration I was informed that the Notice of Hearing was sent, for some unknown reason, to the Appellant and her representatives by electronic mail only, but the Tribunal did not hold a record of that email being sent.

9. I was informed by Miss Morjaria who, having spoken to those instructing her on the morning of the hearing on my request, that no email containing details of the hearing or telephone call on the day of hearing was received from the Tribunal by the solicitor with care and conduct of the Appellant's case. While the absence of a statement to this effect from the solicitor concerned was unsatisfactory, Mr Bramble did not dissent from the Tribunal's view that it could not be satisfied that the Notice of Hearing had been served on the Appellant and her representative, and that in the circumstances the fairest course was to remit the matter to the First-tier Tribunal for rehearing. I thus set aside the judge's decision.

### **Notice of Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**

**I set aside the decision of the First-tier Tribunal.**

**I remit the case to the First-tier Tribunal to be reheard de novo by a judge other than Judge Cary.**

**No anonymity direction is made.**

Signed

Date 20 July 2017

Deputy Upper Tribunal Judge Bagral