



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/01094/2016

THE IMMIGRATION ACTS

Heard at Field House
On 11th June 2018

Decision & Reasons Promulgated
On 20th June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

MD ANISUR RAHMAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss E Greenwood of Counsel instructed by DG Law Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against the decision of Judge Mensah (the judge) of the First-tier Tribunal (the FTT) promulgated on 13th December 2017.
2. The Appellant is a citizen of Bangladesh who applied for leave to remain in the UK as a General (Tier 2) Migrant. His application was refused on 10th February 2016.

3. The hearing before the FTT took place on 27th November 2017. Neither the Appellant nor his legal representative attended.
4. The judge found that proper notice of the hearing had been given, and there was no request for an adjournment, and therefore decided it was appropriate to proceed and decide the appeal in the Appellant's absence. The appeal was dismissed.
5. The Appellant applied for permission to appeal to the Upper Tribunal. It was contended that the Appellant's solicitors and Appellant did not receive the notice of hearing. The solicitors had moved address and notified the Tribunal.
6. Reliance was placed upon MM Sudan [2014] UKUT 00105 (IAC) which in the headnote states;
 - "1. Where there is a defect or impropriety of a procedural nature in the proceedings at first instance, this may amount to a material error of law requiring the decision of the First-tier Tribunal (the FTT) to be set aside.
 2. A successful appeal is not dependent on the demonstration of some failing on the part of the FTT. Thus an error of law may be found to have occurred in circumstances where some material evidence, through no fault of the FTT, was not considered with resulting unfairness (E & R v Secretary of State for Home Department [2004] EWCA Civ 49)."
7. It was submitted that the Appellant had representatives on record at the time of the appeal hearing, and that a previous hearing had been adjourned at the Appellant's request because of ill-health, and this demonstrated that he wanted to participate in proceedings, and it was submitted that the FTT ought to have telephoned the Appellant's representatives to ascertain why there was no attendance.
8. Permission to appeal was granted by Upper Tribunal Judge Kekic who noted that the Tribunal file showed that correspondence was sent to the Appellant and his representatives at SE13 9UN instead of 7UN as recorded in the Appellant's appeal form.
9. Following the grant of permission the Respondent did not lodge a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) rules 2008.
10. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FTT decision contained an error of law such that it should be set aside.

The Upper Tribunal Hearing

11. Miss Greenwood submitted a skeleton argument and contended that it was clear that the Appellant and his solicitors had not received notification of hearing, and therefore the hearing which had taken place was unfair as the Appellant did not have an opportunity to participate. In those circumstances I was invited to find a material error of law, set aside the decision of the FTT, and remit the appeal back to the FTT to be heard afresh.

12. Mr Bramble took a neutral stance in relation to the question of whether or not the Appellant and his representatives had received notification of the hearing date.

My Conclusions and Reasons

13. I am satisfied that the Appellant and his representatives did not receive notification of the FTT hearing on 27th November 2017. The Appellant's solicitors who represented him at that time are no longer representing him, but have confirmed that they did not receive notification of the hearing date. The Appellant's address was given as care of his solicitors. In addition to there being an incorrect post code, the notice of hearing was sent to the solicitors at their previous address.
14. The solicitors had written to the FTT on 17th June 2016 advising of a new address, that being 126 Commercial Road, London, E1 1NL. Notice of hearing was sent to the solicitors at "E1 Solicitors, 10 Wearside Rod, London, SE13 9UN." The previous address of the solicitors should have been 10 Wearside Road, London, SE13 7UN.
15. I accept that the Appellant and his representatives did not receive notification of the hearing date which is why there was no attendance. In my view this amounts to a procedural irregularity capable of making a material difference to the outcome or the fairness of proceedings such as to constitute an error of law, although the judge cannot be blamed for this. I therefore set aside the FTT decision with no findings preserved.
16. I have taken into account paragraph 7.2 of the Senior President's Practice Statements, and find that because the Appellant has not had an opportunity for his case to be put to and considered by the FTT, it is appropriate to remit this appeal back to the FTT to be decided afresh.
17. The appeal will be heard at the Taylor House Hearing Centre and the parties will be advised of the time and date in due course. The appeal is to be heard by an FTT Judge other than Judge Mensah. The Appellant confirmed no interpreter was required.

Notice of Decision

The decision of the FTT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FTT with no findings of fact preserved.

Anonymity

The FTT made no anonymity direction. There has been no request for anonymity made to the Upper Tribunal. I see no need to make an anonymity order.

Signed

Date 11th June 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

No fee award is made by the Upper Tribunal. The issue of any fee award will need to be considered by the FTT.

Signed

Date 11th June 2018

Deputy Upper Tribunal Judge M A Hall