



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/12414/2015

THE IMMIGRATION ACTS

Heard at Field House
On 10th May 2018

Decision & Reasons Promulgated
On 31st May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

MOHAMMED DABIRUZZAMAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Rahman, Legal Representative

For the Respondent: Mr S Kandola, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge I. M. Scott dismissing his appeal against the refusal of his application for further leave to remain as a Tier 4 (General) Student made on 1st April 2014 which was the subject of a refusal dated 13th March 2015. The Appellant appealed against that decision and an appeal hearing was set down for 29th March 2016. On 29th March 2016 Judge Scott heard the appeal and noted there was no appearance by the Appellant and the appeal proceeded without any representation from the Respondent either. Judge Scott's decision was

promulgated on 28th April 2016. Permission to appeal was granted by First-tier Tribunal Judge Hollingworth. The grounds upon which permission was granted may be summarised as follows:

“The hearing proceeded on the footing that the Appellant had failed to appear. It has been explained that the solicitors acting on behalf of the Appellant made an application for a paper hearing on 28th March 2016 and since then had been waiting for a decision. It is arguable that unfairness has arisen given that directions would have been issued pursuant to such a request and evidence provided in response. At paragraph 3 of the decision the judge refers to there having been no appearance by or on behalf of the Appellant without explanation for his absence and without a request for an adjournment. It is arguable that the Appellant was deprived of the opportunity of providing further evidence.”

2. I was not provided with a Rule 24 reply from the Respondent but was addressed by her representative, who indicated that the appeal was resisted.

Error of Law

3. At the close of submissions I indicated that I would reserve my decision, which I shall now give. I do find that there is an error of law in the decision such that it should be set aside. My reasons for so finding are as follows.
4. In the Grounds of Appeal the Appellant’s solicitors argue that on 28th March 2016 a letter was sent to the First-tier Tribunal from Simon Noble Solicitors which can be seen at page 19 of the appeal bundle and according to page 20 of that same bundle was received by fax at the First-tier Tribunal at 2.43pm on 28th March 2016. According to that letter the following was communicated to the First-tier Tribunal:

**“Re: Request for paper hearing of appeal of Mr Mohammed Dabiruzzaman
DOB: 01-06-1973, Bangladesh
Scheduled to be heard on 19/03/2016**

We write to confirm you that our above named client has just instructed us that he would like to request the Honourable Tribunal to conduct the hearing of his case purely on paper based instead of oral hearing. This is because he is not in a position to maintain the legal costs for the representation in the court, as he does not have any right to work.

We earnestly request you to enable him to make this request and facilitate him to conduct his hearing without oral hearing.

If you require any further information regarding Mr Dabiruzzaman, please feel free to contact us and our dedicated member of staff would be more than happy to assist you in that matter.”

5. Leaving aside the syntax in the message, it is plain from that letter that the Appellant’s representatives were indicating on the afternoon before the hearing that the Appellant

wished for the matter to proceed on paper instead of an oral hearing and that he had requested the Tribunal to “facilitate him” to conduct the hearing.

6. On behalf of the Appellant, Mr Rahman submitted that after this request was made for a paper hearing, no reply was received from the First-tier Tribunal and the decision promulgated on 26th April 2016 was not received by Simon Noble Solicitors until 7th December 2017. On that basis Mr Rahman submitted that communication of the decision was not effective until it was received on 7th December 2017 (see *Hosier v Goodall* [1962] 1 All E.R 30). I accept the submission by Mr Rahman that service was ineffective until the decision was received on 7th December 2017 and consequently the appeal was brought in time as observed by Judge Hollingworth and there has been a significant delay in the outcome of the appeal being communicated to the Appellant.
7. However, I did express my concern to Mr Rahman that there was a period of unexplained inactivity by the Appellant’s solicitors between their fax of 28th March 2016 on the one hand, and their phone call and email to the First-tier Tribunal on 24th November 2017 on the other hand, which resulted in the decision of Judge Scott being sent and received by the Appellant on 7th December 2017. When I asked Mr Rahman what Simon Noble Solicitors had done to secure directions from the First-tier Tribunal to facilitate the paper hearing for their client which they had requested, or whether the Appellant’s solicitors had sought confirmation that the oral hearing had been delisted and was to proceed on paper, I was told that *nothing* was done and that the solicitors expected that the First-tier Tribunal would issue directions of its own accord and that the Appellant would have then served his evidence in response to those directions. I was also told that the First-tier Tribunal staff ‘sometimes’ give directions in situations where appeals are converted from oral to paper hearings but equally sometimes the Tribunal did nothing at all. In any event, nothing was done by Simon Noble Solicitors until a letter was received by them from the Home Office which enclosed an IS.96 in respect of the Appellant dated 20th November 2017, over one and a half years after requesting a paper hearing.
8. The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 indicate clearly at Rule 5 (concerning the procedure for applying for and giving directions) that the Tribunal *may* give a direction on the application of one or more parties or on its own initiative and that applications for directions may be made by sending or delivering a written application to the Tribunal. With that in mind, it is clear that a Tribunal will not invariably issue directions where an oral hearing is converted into a paper one, and in that light, the solicitors should not have waited for directions to be issued before submitting any evidence on behalf of the Appellant.
9. I also cannot understand why the standard directions for service of evidence in respect of the *oral* hearing listed for 29th March 2018 were not complied with sooner than the faxed request for a paper hearing made on 28th March 2016 at 2.43pm by fax which would have meant that the Appellant’s evidence would have been before the Tribunal before the paper appeal was requested anyhow.

10. In light of the foregoing analysis, it was less than ideal for the Appellant's solicitors to do nothing further after sending the fax at 2.43pm on the day before the oral hearing, particularly where *no* response was received from the First-tier Tribunal and *no* directions were *ever* received by them either, for over one and a half years.
11. In any event, having assessed the preceding series of unfortunate events, I do not find that the Appellant is to be blamed for what has transpired, and in that light I am just persuaded that the Appellant has not had the benefit of an opportunity to present his evidence and receive a fair hearing owing to the reasons given above.
12. In light of the above findings, I set aside the decision of the First-tier Tribunal in its entirety, due to procedural irregularity, as opposed to any error of law in the judgment.

Notice of Decision

13. The appeal to the Upper Tribunal is allowed. The appeal is to be remitted to the First-tier Tribunal to be heard by a differently constituted bench.

Directions

- (1) Standard directions are to be issued.
- (2) The Appellant's representative has expressly requested that the matter be listed for an oral hearing (not a paper hearing).
- (3) No interpreter has been requested and the appeal is to be listed for two hours to allow for two witnesses who are anticipated to give evidence.
- (4) The appeal is to be listed for the first available date at IAC Taylor House.
- (5) Should either party require any further directions they must make that request in writing to the First-tier Tribunal in good time (and if they do not hear anything from the First-tier Tribunal within a reasonable amount of time, parties should of course repeat their request for further directions).
- (6) No anonymity direction is made.

Signed

Date 27 May 2018

Deputy Upper Tribunal Judge Saini