



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

Appeal Number: IA/33548/2015

THE IMMIGRATION ACTS

Heard at Field House

On 15 January 2018

**Decision & Reasons
Promulgated
On 06 February 2018**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**NORMAN ADOLPHUS ROBINSON
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Kouma, Solicitor, Migrant Legal Action

For the Respondent: Ms R Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Jamaica and his date of birth is 1 December 1966. He appealed against the decision of the Respondent on 12 October 2015 to refuse his Article 8 claim. His appeal was dismissed by First-tier Tribunal Judge Hodgkinson in a decision that was promulgated on 26 April 2017 following a hearing on 6 April 2017.
2. The judge proceeded in the absence of the Appellant and his representatives, having noted at paragraph 2 of the decision that neither his nominated representatives nor the Appellant attended. The judge

recorded that the representatives were telephoned on their last supplied telephone numbers and those numbers were found to be unobtainable. There was no explanation given to the Tribunal explaining the failure to attend. The judge was satisfied that the Appellant and his representative had been duly served with the notice of the hearing and was satisfied that it was in the interests of justice to proceed with reference to Rule 28 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

3. Permission was granted to the Appellant by First-tier Tribunal Judge Grant-Hutchison in a decision of 10 November 2017. Thus the matter came before me.
4. The grounds assert that the non-attendance of the Appellant and his representative occurred as a result of an administrative error on behalf of the Appellant's solicitor. In support of this, Ms Kouma, the Appellant's solicitor provided a witness statement. She attended the hearing before me to explain that she became aware of the mistake on 24 April 2017 and wrote to the Tribunal the following day on 25 April 2017. She cannot explain why the Tribunal were not able to make telephone contact on the day of the hearing.
5. Ms Kouma indicated that Migrant Legal Action take full responsibility for the error and that the Appellant is not to blame. She brought to my attention that the notice of the hearing was sent to the representatives only and not to the Appellant's home address. Ms Pettersen did not add anything other than that the hearing was properly listed on 6 April 2017 and that a notice had been properly sent to the Appellant's solicitors.
6. The error is most unfortunate. I accept that the Appellant cannot be held responsible for the mistake made by those representing and which has had such serious consequences. I accept that had the Appellant been made aware of the date of hearing he would have attended and this may have led to a different outcome. There has been a procedural irregularity resulting in unfairness.
7. I set aside the decision to dismiss the Appellant's appeal and remit the matter to the First-tier Tribunal for a rehearing.
8. The Appellant's solicitor is directed to submit a copy of her witness statement which was purported to have been attached to the grounds of appeal within seven days of the hearing.
9. I make the following observations in relation to ground 2. The date of the deportation order is not entirely clear to me but it may be that it was made more than ten years ago. However, this does not necessarily lead to a conclusion that it should not be taken into account, bearing in mind from the limited paperwork before me it appears that the Appellant never in fact left the UK and has remained here in breach of that order.

Notice of Decision

The appeal is allowed. The decision of the FtT is set aside and the matter is remitted to the FtT for a hearing *de novo*.

No anonymity direction is made.

Signed Joanna McWilliam

Date 30 January 2018

Upper Tribunal Judge McWilliam