



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

Appeal Number: PA/01367/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 5<sup>th</sup> February 2018**

**Decision & Reasons  
Promulgated**

**On 21<sup>st</sup> February 2018**

**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

**AHMED [H]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms A Harvey of Counsel, instructed by Parker Rhodes  
Hickmotts

For the Respondent: Ms A Everett, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Spencer promulgated on 23 December 2016, in which the Appellant's appeal against the decision to refuse his asylum claim dated 27 January 2016 was dismissed.

2. The Appellant is a national of Ethiopia, born on [ ] 1984 who claimed asylum in the United Kingdom on the basis of his imputed political opinion. The Respondent refused the application on 27 January 2016 on the basis that it was not accepted that the Appellant was an active supporter of OLF, nor that he had been detained by the Ethiopian authorities for supporting the OLF and in conclusion that he would not be at risk on return to Ethiopia.
3. The Appellant did not attend the appeal before the First-tier Tribunal on 14 December 2016. At the hearing, Judge Spencer found that the notice of hearing had been sent to the Appellant's old address (his new address having been notified to the First-tier Tribunal at the CMR on 28 September 2016). Counsel for the Appellant was given an opportunity to take instructions and was informed that the Appellant had had regular contact with his solicitors prior to the hearing and that they had sent the notice of hearing to his new address. Counsel for the Appellant sought an adjournment on the basis that it was not in the best interests of the Appellant for the hearing to proceed in his unexplained absence but that was refused in light of the information available to Judge Spencer, that the Appellant was aware of the hearing but there was no explanation for his non-attendance and nothing to suggest that he would attend a future hearing. Counsel for the Appellant withdrew from the case at this point and made no submissions in the appeal.
4. Judge Spencer dismissed the appeal in a decision promulgated on 23 December 2016 primarily on the basis that the Appellant was not found to be credible in his claims and had not established that he would be at risk on return to Ethiopia.

### **The appeal**

5. The Appellant appeals on four grounds, first, that there was an error of fact because the Appellant's solicitors had sent the notice of hearing to his old address and therefore the Appellant had not actually been notified of the time and place of the hearing. Secondly, that the First-tier Tribunal should in any event have granted the application for an adjournment of the hearing to enable the appeal to be dealt with fairly and justly in accordance with rules 4(3)(h) and 21 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (the "Procedure Rules"). Thirdly, the First-tier Tribunal erred in law by applying the test under rule 28 of the Procedure Rules applying the interests of justice rather than the overriding objective to deal with cases fairly and justly. Finally, that the First-tier Tribunal denied the Appellant a fair hearing, which in this case where credibility was in issue, required him being given the opportunity to be heard in person.
6. Permission to appeal was initially refused by both the First-tier Tribunal and Upper Tribunal, but successfully challenged on application for Judicial Review. Permission to appeal was subsequently granted on 7 December 2017 by Judge Ockelton.

7. At the hearing, the Home Office Presenting Officer confirmed that she was not in a position to dispute the Appellant's evidence about where notice of the hearing was sent by his solicitors or as to their conduct and errors in the submissions made to the First-tier Tribunal in this regard. It was submitted that there was no error of law in the decision made by Judge Spencer on the basis of information available to him, but it was agreed that there was a procedural irregularity and/or error of fact which was sufficient to justify setting aside the decision and remitting it to the First-tier Tribunal for a de novo hearing. The Appellant should have the opportunity to give oral evidence given the issues of credibility in the appeal.

### **Findings and reasons**

8. I find no fault or error of law in the way that Judge Spencer approached the application for an adjournment or the decision he made on it which was in accordance with the Procedure Rules and open to him on the basis of information available to him at the hearing.
9. I do however find, as accepted by the Respondent, that there has been a procedural irregularity in that the notice of hearing was sent to the Appellant's old address by both the First-tier Tribunal and his own solicitors (and I accept the evidence from them on this point, contrary to the instructions/information given to Counsel on the day of the hearing). This in turn leads to there being a mistake of fact in that the Appellant had not actually been notified of the hearing. In particular in an asylum appeal where credibility is in issue, the Appellant should be notified of the hearing date and thereby be given an opportunity to attend and give oral evidence at that hearing as a matter of fairness. The procedural and professional errors in this case, which were not the fault of the Appellant prevented this.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal involved the making of a material error of law. As such I set aside the decision of the First-tier Tribunal and direct the appeal be remitted to the First-tier Tribunal for a de novo hearing before a different Judge.

No anonymity direction is made.

Signed  
2018



Date 16<sup>th</sup> February

Upper Tribunal Judge Jackson