



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

Appeal Number: PA/06467/2017

THE IMMIGRATION ACTS

**Heard at Glasgow
On 20th February 2018**

**Decision issued
On 8th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

**E E
(Anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr E MacKay, McGlashan MacKay, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting
Officer

DECISION AND REASONS

1. This appeal is brought against a decision by Judge of the First-tier Tribunal Pears dismissing an appeal on protection and human rights grounds.
2. The appellant is a national of Nigeria. The hearing before the First-tier Tribunal on 12th October 2017 at Harmondsworth proceeded in his absence. The position was that until 11th September 2017 the appellant was detained at Harmondsworth IRC. Upon his release he returned to Scotland, where he had been living previously, but his solicitors in London were still acting for him at that time.

3. On the day of the hearing the Judge of the First-tier Tribunal attempted to contact the solicitors. The judge was informed that the solicitor acting for the appellant was in court but a message would be passed to him. The judge, who was informed by Tribunal staff that the appellant was now residing in Scotland, delayed the start of the hearing until midday. The solicitor in question did not contact the tribunal until later in the day.
4. I was informed by the appellant's current solicitor, Mr MacKay, that the appellant's solicitor had not returned to his office until after 5 p.m. on 12th October. He sent a fax to the Tribunal at once and attended the hearing centre next day in an attempt to remedy the position. The solicitor acknowledged that he was at fault. He was under the mistaken impression that the hearing had been adjourned and had even told counsel who had been instructed to stand down.
5. The Judge of the First-tier Tribunal properly considered whether to proceed under rule 28 of the First-tier Procedure Rules. It has never been disputed that notice of the hearing was given. The judge decided that it was in the interests of justice to proceed.
6. While the exercise of the judge's discretion to proceed is challenged in the grounds of appeal it is difficult to show that the judge erred in law by so doing. The judge had made proper inquiries and delayed the start of the hearing for a response to be received. The judge was aware that the appellant was living in Scotland but still had solicitors in London.
7. What is of greater concern is what happened after the hearing. The judge's decision was written with commendable despatch and was signed on 15th October and promulgated on 18th October. However, in the evening of 12th October the appellant's solicitor contacted the hearing centre by fax to explain his absence. He then went to the hearing centre the next day seeking confirmation that the fax had been received. The fax of 12th October did not reach the judge, however, until after the judge had sent the decision for promulgation. This is apparent from the judge's decision at paragraph 8, where the judge wrote: "I adjourned until midday but there was no message then *or thereafter* that reached me." (my italics)
8. I had before me the letter of 12th October 2017 sent by fax seeking to explain the reasons for the solicitor's non-attendance. The judge does not appear to have received notification of this letter until the day the decision was promulgated, 18th October. The judge was seised of the appeal until the decision was promulgated. Had the judge been aware earlier of the full position, it would have been open to the judge to have the appeal re-listed for hearing instead of promulgating the decision. Indeed, it might still have been possible

for the judge to recall the decision immediately prior to its promulgation on 18th October. It would seem to have been in the interests of justice had these courses been followed.

9. According to rule 32 of the First-tier Procedure Rules a decision may be set aside where it is in the interests of justice to do so and one or more of certain conditions are satisfied. These conditions include:
“(b) a document relating to the proceedings was not provided to the Tribunal at an appropriate time;
(c) a party or a party’s representative, was not present at a hearing related to the proceedings; or
(d) there has been some other procedural irregularity in the proceedings.”
10. Any or all of these conditions may be considered to apply to the circumstances arising here. Following the hearing there was an opportunity to apprise the judge of the letters from the solicitor explaining his absence, but this was not done. I am satisfied that as a result of a procedural irregularity the appellant lost the opportunity of attending his appeal hearing and putting forward his case. Because of this it is in the interests of justice for the decision of the First-tier tribunal to be set aside.
11. Although I have considered this appeal in the Upper Tribunal I am able to exercise the powers available to a Judge of the First-tier Tribunal, including the power of set aside under rule 32, in terms of section 12(4) of the Tribunals, Courts and Enforcement Act 2007. It is unfortunate that an earlier decision in this appeal has already been set aside but this was based on different circumstances. The proper course is for the decision of Judge Pears to be set aside with, of course, no findings preserved. The appeal is then once again before the First-tier Tribunal. It should be re-listed for hearing in Glasgow before a different judge.
12. Because the decision is set aside it is neither necessary nor appropriate for me to consider any of the other grounds of appeal. It was on the basis of an arguable procedural irregularity that permission to appeal was granted.

Conclusions

13. The making of the decision of the First-tier Tribunal involved a procedural irregularity.
14. The decision is set aside.
15. The appeal is to be re-listed before the First-tier Tribunal.

Anonymity

The Judge of the First-tier Tribunal made an anonymity direction. This direction shall remain in force to preserve the positions of the parties pending a final decision in the appeal.

Deputy Upper Tribunal Judge Deans
March 2018

7th