



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10600/2017

THE IMMIGRATION ACTS

Heard at Field House
On July 13, 2018

Decision & Reasons Promulgated
On 07, August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

KEL [B]
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Thirumanley, Legal Representative

For the Respondent: Miss Ahmad, Senior Home Office Presenting Officer

DECISION AND REASONS

1. No anonymity order is made.
2. The appellant is a national of Turkey. The appellant stated he last entered the United Kingdom on March 16, 2017. He was encountered working illegally on March 31, 2017 and served with a notice as an overstayer. He claimed asylum on April 7, 2017. The respondent refused that application on October 5, 2017.

3. The appellant lodged grounds of appeal on under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. His appeal came before Judge of the First-tier Tribunal Haria (hereinafter called "the Judge") on March 29, 2018 and in a decision promulgated on May 3, 2018 the Judge dismissed his appeal on protection grounds and human rights grounds.
4. The appellant appealed this decision on May 15, 2018. He argued that he had been unaware of the hearing which had taken place on March 29, 2018 as he only received notice of that hearing date after the event. Additionally, he submitted evidence that demonstrated he had been living in Turkey between 2012 and 2016 which he submitted undermined the Judge's finding that he had remained in the United Kingdom since first arriving on January 18, 2011. He also submitted that the Judge had failed to deal with the evidence properly or have regard to case law and objective evidence which demonstrated that if he were returned it was highly likely he would be detained and questioned about his past activities and therefore face persecution.
5. Permission to appeal was granted by Judge of the First-tier Tribunal Birrell on May 29, 2018 as she found it arguable there may have been procedural unfairness and whilst she found less merit to the other grounds she stated all grounds were arguable.

PRELIMINARY ISSUE

6. I raised with Miss Thirumanley whether the appellant had retained the envelope in which the notice of hearing had been delivered and she stated that he had not done so but he had instructed her firm on April 17, 2018 who had then written both to the Tribunal and the respondent about the case. Those letters had been sent prior to the date that the decision was promulgated. I was provided with a copy of the letters as I could not find a copy on the court file.
7. I raised with Miss Ahmad the issue of fairness. She submitted that if the Tribunal was satisfied the decision had been sent to the appellant then the onus switched to the appellant to satisfy the Tribunal that he had not received it prior to the hearing. It was then a matter for the Tribunal as to whether there had been any unfairness to the appellant.

FINDINGS

8. On the issue of fairness I take into account the appellant was unrepresented when the matter came before the Tribunal on March 29, 2018 and that this is not a case where the appellant is saying he never received the notice. I also take on board that the respondent received their notice on March 12, 2018.
9. The appellant's new representative wrote to the Tribunal on April 17, 2018 enquiring about the hearing that had now been brought to the appellant's attention. It is regrettable that this letter was not passed to the Judge or put before a Duty Judge for a decision to be taken.

10. Whilst I have no direct evidence the appellant received the notice late I am prepared, in the interests of fairness, and applying the 2014 Procedure Rules, to give the appellant the benefit of the doubt and accept he was unaware of the Hearing date.
11. In such circumstances, I have no alternative but to remit the matter back to the First-tier Tribunal for a de novo hearing before a Judge other than Judge of the First-tier Tribunal Haria.

DECISION

12. There is an error in law and the original decision is set aside.

Signed

Date 13/07/2018

A handwritten signature in black ink, appearing to read 'SPAL', with a horizontal line underneath it.

Deputy Upper Tribunal Judge Alis