Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13253/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 1 May 2019	**On 16 May 2019**

Before

THE HONOURABLE MR JUSTICE SOOLE
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE McWILLIAM

Between

HASIBULLAH [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Jegarajah, Counsel, instructed by Haven Green Solicitors
For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

This is an appeal against the decision of the First-tier Tribunal, Judge Davey, promulgated on 25 October 2018, which dismissed his appeal against the respondent's decision dated 21 November 2017 refusing a human rights based claim.

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The appellant is a national of Afghanistan born on 30 December 1993. He has committed a substantial number of criminal offences in the United Kingdom between April 2008 and 2015. These culminated in a sentence of 49 months' imprisonment imposed on him by the Crown Court at Harrow on 30 November 2015. This was composed of a sentence totalling 45 months for drugs offences including the supply of class A drugs and a consecutive sentence of four months for dangerous driving.

On 9 May 2017 a deportation order was made pursuant to Section 32(5) of the UK Borders Act 2007, together with a letter of refusal of a human rights based claim. However, in the light of the Supreme Court judgment in **Kiarie and Byndloss v Secretary of State for the Home Department [2017] UKSC 42**, handed down on 14 June 2017, the decision of 9 May was withdrawn and the claim reconsidered. Upon that reconsideration, by Notice of Decision dated 21 November the human rights claim was again refused. He appealed against that decision.

For the purpose of the appeal he was from at least 30 July 2018 represented by advisers carrying on practice under the name Consultancy Legal Services CLS. An email letter of that date signed by Mr Alberto Khadra-Pozo, a solicitor, so advised the First-tier Tribunal. The address of CLS at that time was given as 98 Victoria Road, London NW10 6NB. On 2 August 2018 there was a Case Management Review Hearing (CMRH) attended by a Mr Najjar, a legal representative who gave his professional address as 43 – 45 Notting Hill Gate, W11 3LQ. That was the new address of CLS. Directions were given on that occasion including for the appellant to file and serve evidence and provide a bundle.

The hearing was subsequently fixed for 28 September 2018 at Hendon Magistrates' Court. A notice of that hearing was sent to the given address in Notting Hill Gate as well as to the appellant at that same address, which was the address he had given for service. There was no subsequent communication from the appellant or CLS to the First-tier Tribunal following the CMRH. Thus no evidence was served on behalf of the appellant nor a bundle supplied. By the decision promulgated on 25 October 2008 the Tribunal concluded that proper notice of hearing had been given and proceeded to consider the substance. Having regard to the fact that the appellant was a foreign criminal who had been imprisoned for a term of more than four years, the provisions of Section 117C of the Nationality, Immigration and Asylum Act 2002 and Section A398 of the Rules and such evidence as was before the Tribunal, Judge Davey concluded that neither Exception 1 or 2 in Section 117C applied, nor was there any evidence of any very compelling circumstances over and above those described in the Exceptions within the meaning of Section 117C(6).

An application dated 18 March 2019 for permission to appeal out of time was presented on behalf of the appellant by representatives identified in the form as Haven Green Solicitors with a contact name of Mr Alberto Pozo and an address at 41 The Broadway, London W5 2NP. By order of First-tier Tribunal

Judge Grant-Hutchison dated 29 March 2019 time was extended and permission granted to appeal.

The grounds in support of the appeal confirmed that CLS's change of address was notified to the FtT on 27 July 2018 and repeated in an email of 2 September. However, it states that the next information from the Tribunal was the decision of 25 October, which was received at the Notting Hill Gate address on 29 October 2018. On further enquiry, the representative was told that notice of hearing had been posted to that address on 11 August 2018. The appeal grounds then record that "The A's solicitors had made diligent enquiries but simply could not explain why they had not received correspondence from the Tribunal and the R".

The next recorded event is almost four months later when on 25 February 2019 it is stated that 'A's solicitors' made enquiries of 'the director of the building'. This is a reference to Mr Alex Molokwu, a 'director' of an entity identified as 'Cowork Hub' at the address 43 - 45 Notting Hill Gate. The building is called Newcombe House. It is stated in the grounds that on the following day, 26 February, the 'building director' informed the appellant's solicitors that there was 'another company of the same name in the same building and that the company will complete plans to prevent these problems re-occurring'.

An attached letter dated 15 March 2019 signed by Mr Molokwu states:

> "I can confirm CLS have had mail missing in Newcombe House in August 2018. It seems that due to another company having the same name, mail has been misplaced. Cowork Hub rent office space to CLS on the fourth floor in Newcombe House. We are not sure how the post went missing. We could not retrieve the post."

This letter evidently raises a number of questions. First, on the evidence otherwise available there is no suggestion that CLS was a company. Secondly, Companies House would not allow two companies to have the same name at the same time. Thirdly, and whatever the legal entity which is CLS, there is no further evidence in support of the statement that there were two of the same name in the same building. Fourthly, it is not obvious how Mr Molokwu is in a position to confirm that CLS had mail missing at Newcombe House in August 2018. That would inherently be a matter for Mr Pozo or someone else at CLS to depose to, rather than anyone at Cowork Hub. Yet there is no evidence put forward to that effect, notwithstanding that Mr Pozo, albeit through a different practice at a new address, has conduct of the appeal. Furthermore, no account is provided as to what was done in response to the directions given at the CMRH on 2 August 2018.

In support of the appeal it is submitted that the appellant has been denied an oral hearing through no fault of his own and that the true responsibility for the failure to be notified is "due to the presence of another company of exactly the same name amongst the offices in the same building", see grounds paragraph 14. Furthermore, there is cited the decision of the Court of Appeal in **FP v.**

SSHD (Iran) [2007] EWCA Civ 13, where Sedley LJ stated, contrary to the respondent's submissions, that "there is no general principle of law which fixes a party with the procedural errors of his or her representative."

The respondent's position in its short Rule 24 note of 25 April 2019 is to put the appellant to proof on these matters.

At the hearing today Counsel Ms Jegarajah appeared on behalf of the appellant. We raised with her the questions which I have previously identified. In essence, she was not in a position to provide any further information. As to the four month gap, she stated that this in part had been due to the unwillingness of Cowork to commit their observations to writing. In the face of our questions Ms Jegarajah applied for an adjournment to put in better evidence in support of the appeal, namely by statements presumably from the appellant and Mr Pozo. That application is opposed by the respondent.

Expressed in very general terms, we would typically expect a much fuller account to be supplied than has occurred in the present case. However, the ultimate question is whether, whatever was done or not done by those acting for the appellant, he had notice of the hearing. This is a matter of great importance to him and natural justice requires that he should have notice of the hearing and be able to support his appeal by evidence and argument before the First-tier Tribunal. The appeal is made on his behalf by a solicitor of the Senior Court. The effect of the contents of the grounds of appeal is evidently that the appellant did not have notice of the hearing. It is not unknown for post to go astray.

In this particular case we have concluded that there is not sufficient reason to question that statement by a solicitor that the client as well as himself was unaware of the hearing or to require further evidence in support of that statement. In the very particular circumstances of this case, we accept that the appellant did not have such notice. This case must not be regarded as involving any form of precedent, but as a decision on its very particular facts.

All in all, in the light of our acceptance that the appellant was unaware of the notice of the hearing, we have concluded that natural justice requires that the decision of the First-tier Tribunal should be set aside and that the appeal should be considered afresh by a differently constituted First-tier Tribunal.

Notice of Decision

The appeal is allowed and the appeal remitted to a freshly constituted First-tier Tribunal.

No anonymity direction is made.

Signed Mr Justice Soole Date 12 May 2019

Mr Justice Soole