



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

Appeal Number: HU/01195/2020

THE IMMIGRATION ACTS

**On the paper
On 18 November 2020**

**Decision & Reasons Promulgated
On 2 December 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ABOO SAWLEY HYDA
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ERROR OF LAW FINDING AND REASONS

- 1.** The appellant appeals with permission a decision of First-tier Tribunal Judge Grimes who dismissed the appeal on 21 April 2020, in light of the appellant's failure pursuant to the Tribunal Procedure (First-tier Tribunal Immigration and Asylum Chamber) Rules 2014 to provide grounds of appeal in support of the notice of appeal filed.
- 2.** Permission to appeal was granted by another judge of the First-tier Tribunal the operative part of which is in the following terms:
 - "2. The grounds assert that the Judge erred in determining the appeal without an oral hearing and not listing the appeal for a CMR in circumstances where the Judge did not have the Appellants grounds of appeal before him. The grounds assert that the Appellant did not receive a request for the grounds of

appeal on 3 February 2020 but did receive a request on 5 March 2020 and submitted grounds on 6 March 2020 by post.

3. It is arguable that there was procedural irregularity leading to unfairness. The Appellants solicitors have provided a copy of the letter sent by recorded delivery submitting grounds of appeal dated 6 March 2020. These grounds were clearly not before the Judge. Proof of recorded delivery should be provided at the hearing.”
3. Having considered the judgment of the High Court in *The Joint Council for The Welfare of Immigrants (Applicant) v The President of the Upper Tribunal (IAC) (Respondent) and The Lord Chancellor (Interested Party)* [2020] EWHC 3103 (Admin), in which neither the Pilot Practice Direction issued by the Senior President of Tribunals on 19 March 2020 nor Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 were declared unlawful, consideration can still be given to the appropriate venue for the next hearing of this matter in light of the overriding objectives.
4. Paragraph 4 of the Practice Direction reads as follows: “Decisions on the papers without a hearing. Where a Chamber’s procedure rules allow decisions to be made without a hearing, decisions should usually be made in this way, provided this is in accordance with the overriding objective, the parties’ ECHR rights and the Chamber’s procedure rules about notice and consent.”
5. The Overriding Objective is contained in the Upper Tribunal Procedure Rules. Rule 2(2) explains that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues.
6. Rule 2(4) puts a duty on the parties to help the Upper Tribunal to further the overriding objective; and to cooperate with the Upper Tribunal generally.
7. Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008 provides:
 - ‘34. -
 - (1) Subject to paragraphs (2) and (3), the Upper Tribunal may make any decision without a hearing.
 - (2) The Upper Tribunal must have regard to any view expressed by a party when deciding whether to hold a hearing to consider any matter, and the form of any such hearing.
 - (3) In immigration judicial review proceedings, the Upper Tribunal must hold a hearing before making a decision which disposes of proceedings.
 - (4) Paragraph (3) does not affect the power of the Upper Tribunal to—
 - (a) strike out a party’s case, pursuant to rule 8(1)(b) or 8(2);
 - (b) consent to withdrawal, pursuant to rule 17;

- (c) determine an application for permission to bring judicial review proceedings, pursuant to rule 30; or
 - (d) make a consent order disposing of proceedings, pursuant to rule 39, without a hearing.'
- 8.** It has not been shown to be inappropriate or unfair to exercise the discretion provided in Rule 34 by enabling the error of law question to be determined on the papers in this case. Nothing on the facts or in law makes consideration of the issues on the papers not in accordance with the overriding objectives at this stage.

Error of law

- 9.** The chronology shows the respondent refused the appellant's application for leave to remain on human rights grounds, dated 19 March 2019, on 3 January 2020 with a right of appeal.
- 10.** The appellant lodged his appeal by email on 17 January 2020.
- 11.** It appears a request for grounds of appeal which were not with the appeal filed should have been sent to the parties on 3 February 2020, but a subsequent communication recorded by the appellant's solicitor indicates it was not in fact sent. On 6 March 2020 the representatives did receive a request for the grounds of appeal.
- 12.** The representatives state they send the same to the Arnhem Support Centre by post with recorded delivery reference KS 9797 3901 6GB.
- 13.** On 29 April 2020, the appeal was dismissed by the Judge.
- 14.** It is not clear why documents submitted by post did not reach the Judge although the first Covid-19 lockdown occurred in England and Wales from the 23 March 2020.
- 15.** I find, with it being recognised the Judge is not at fault, that a procedural error has occurred in the appeal being dismissed without giving proper consideration to the grounds of appeal submitted. Hence denying the appellant a fair hearing of the appeal on its merits. I find the procedural irregularity to be material.
- 16.** I therefore set aside the decision and direct that this appeal be remitted to the First-tier Tribunal nearest to the appellant's place of residence for it to be heard afresh by judge other than Judge Grimes.

Decision

- 17. The First-tier Judge materially erred in law. I set aside the Judge's decision and direct that this appeal be remitted to the First-tier Tribunal nearest to the appellant's place of residence for it to be heard afresh by judge other than Judge Grimes.**

Anonymity.

- 18.** The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 18 November 2020