



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

Appeal Numbers: UI-2022-001068
PA/04745/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 1 August 2022
Extempore**

**Decision & Reasons Promulgated
On 23 September 2022**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**M L
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Wilcox, Counsel instructed by Morgan Hill Solicitors
For the Respondent: Ms A Ahmed, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Abebrese promulgated on 17 September 2021 dismissing his appeal. The appellant was not present at that hearing.

2. The appellant challenged the decision of the First-tier Tribunal on the basis that the judge had wrongly proceeded to hear the decision without properly directing himself as to whether or not he should do so; in failing to take into account the impact this would have on the appellant; and, without having had due regard to the Rules and the principles set out in Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC). It is also averred in the grounds of appeal that the judge did not properly reach findings on the evidence placed before him.
3. The Secretary of State by way of a letter pursuant to Rule 24 points out that the appellant had simply not engaged with the process and that the judge was entitled to proceed in the circumstances.
4. I consider that the decision of the First-tier Tribunal did involve the making of an error of law. Whilst the judge does at paragraphs 8 to 10 deal with the apparent failure of the appellant to engage with the process, he does not identify any documents of the documents said to have been sent to the appellant, either by reference to dates or from whom they were sent and when or, for that matter, to what address they were sent.
5. Having considered the electronic file provided to me, I am unable to find any documents that were sent to the appellant. It may be that they had been omitted by error but having said that, the judge's approach as to how he should have proceeded in the absence of the appellant is wholly defective. There is a complete failure to engage with the relevant procedural rules or the principles set out in Nwaigwe. The judge simply proceeded to hear the appeal in the appellant's absence without stating why he thought he should do so.
6. Further, and in any event, the judge's findings are in the light of the evidence before him not properly justified but in any event, have adjourned the appeal there is a significant procedural error in this case. It may well be that the judge was not aware of what had happened with the file but equally, the judge should have directed himself properly in line with authority and the Procedural Rules.
7. The net result of this is that the appellant has not had a fair hearing and on that basis the decision is set aside. As the appellant has not had an opportunity to put forward his case the matter must be remitted to the First-tier Tribunal for a fresh decision on all issues before a judge other than Judge Abebrese.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law, and I set it aside

I remit the decision to the First-tier Tribunal for a fresh decision on all issues.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 3 August 2022

Jeremy K H Rintoul

Upper Tribunal Judge Rintoul