



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-005618**  
**First-tier Tribunal No:**  
**PA/53641/2021**  
**IA/09999/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 30 April 2023**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**  
**DEPUTY UPPER TRIBUNAL JUDGE WELSH**

**Between**

**MKU**  
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Maria Jabati of Counsel, instructed by Schneider Goldstein Law  
For the Respondent: Mr Nicholas Wain, Senior Home Presenting Officer

**Heard at Field House on 31 March 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

**Introduction**

1. This is an appeal against a decision of First-tier Tribunal (“FTT”) Judge Hussain, promulgated on 26 September 2022. By that decision, Judge Hussain dismissed the Appellant’s appeal against the decision of the Respondent to refuse his protection and human rights claim.
2. At the conclusion of the hearing, we determined that the decision of Judge Hussain involved the making of an error on a point of law and we set aside the decision. We now set out our reasons.

### **Background**

3. The substantive appeal hearing before Judge Hussain took place on 27 June 2022. Neither the Appellant nor his representative attended. Enquiries made with the Appellant’s solicitor revealed that the solicitor had been unaware of the listing, hence the non-attendance of both the Appellant and his representative. Judge Hussain decided to proceed in absence pursuant to rule 28 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (“the Tribunal Procedure Rules”).
4. Prior to the promulgation of Judge Hussain’s decision, a further substantive appeal hearing took place on 23 September 2022. At that hearing, before Judge Chinweze, the Appellant and his representative attended and the hearing was effective. Neither Judge Chinweze nor the parties were aware of the earlier hearing before Judge Hussain. Fortunately, prior to promulgating his decision, Judge Chinweze discovered that there had already been a decision promulgated by Judge Hussain.

### **The grounds of appeal and grant of permission**

5. The grounds of appeal pleaded that there had either been a procedural error, resulting in the case being heard twice by two different judges, or that there had been one hearing, in which case the Appellant’s oral evidence had not been taken into account.
6. Permission to appeal was granted by the FTT on 18 November 2022.

### **The error of law hearing**

7. Following directions issued by the Upper Tribunal, a helpful written note was provided to the Upper Tribunal by Judge Chinweze and a witness statement filed by Counsel who had appeared at the hearing on 23 September 2022.
8. As a result of this further information, Mr Wain conceded that there had been an error of law.
9. Whilst the precise nature of the administrative error that led to the hearing being listed twice remains unclear, we are satisfied, from the note of Judge Chinweze and the witness statement of Counsel, that the Appellant’s legal representative was not notified of the first hearing date. In these circumstances, rule 28(a) of the Tribunal Procedure Rules was not satisfied and it follows that the Appellant was deprived of a fair hearing.

### **Notice of Decision**

10. The decision of the FTT involved the making of an error on a point of law such that the decision must be set aside.

**Remaking decision**

11. In reaching our decision, we apply paragraph 7.2 of the Senior Presidents Practice Statement. We conclude that the appropriate forum for remaking is the FTT because the Appellant has not yet had a fair hearing of his appeal and all factual issues remain to be decided. We remit the appeal to the FTT with no findings of fact preserved.

**CE Welsh**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**4 April 2023**