



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002898

First-tier Tribunal No: HU/00984/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 27 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

MNU
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C. Sultan, Counsel instructed by EcoM Solicitors
For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

Heard at Field House on 18 October 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. The Appellant appeals against the decision of Judge Beg (hereafter “the Judge”) dated 28 March 2023, in which she dismissed the Appellant’s human rights appeal against the Respondent’s decision to deport him from the United Kingdom as a foreign national offender dated 15 June 2022.
2. Permission was initially refused by First-tier Tribunal Judge O’Brien on 31 May 2023; permission was later granted by Upper Tribunal Judge Norton-Taylor on 25 September 2023 without any limitation on the Grounds.

The relevant background

3. On the basis of the evidence now before the Tribunal and with the assistance of Mr Sultan and Mr Tufan, the relevant parts of the procedural chronology are:
 - (1) The Appellant lodged an appeal to the First-tier Tribunal against the decision of the Respondent on 24 June 2022.
 - (2) On 15 September 2022, the Appellant was recalled to prison.
 - (3) On 21 December 2022 the First-tier Tribunal issued a notice of hearing.
 - (4) The First-tier Tribunal appeal hearing proceeded on 27 March 2023.
 - (5) The Appellant’s custodial sentence finished on 28 April 2023 but he was transferred into immigration detention and eventually released on immigration bail on 21 September 2023.
4. I should record that neither representative was able to assist the Upper Tribunal in knowing precisely when it was that Moorhouse Solicitors came off the record but overall, I am prepared to accept that this occurred before the notice of hearing for the First-tier Tribunal appeal was sent out on 21 December 2022.

Findings and reasons

5. I am grateful to Mr Tufan for carrying out his own enquiries within the Home Office to confirm that the Appellant was in fact recalled to prison and held in immigration detention as he claims.
6. I am therefore prepared to accept the Appellant’s assertion that, when the notice of hearing for the First-tier Tribunal appeal was sent on 21 December 2022, he was no longer represented by Moorhouse Solicitors and that he did not become aware of the hearing (and indeed the fact that the appeal had been dismissed by the Judge) until April 2023.
7. Whilst it is not entirely clear what happened to the notice of hearing as sent to his residential address, I take into account that he was not residing there at the time and I accept that there have been problems with the postal service delivering his letters to the next door neighbour by accident.

8. I therefore find, with no objection from the Respondent, that there was procedural unfairness (albeit not the fault of the Judge), as the Appellant was not aware of the hearing. Whilst it is obvious that this situation arises predominantly because of his own making I nonetheless conclude that the Appellant did not know about the hearing and was therefore not able to contact the First-tier Tribunal in advance of the appeal hearing on 27 March 2023.

Disposal

9. On the basis of the procedural unfairness in this case, the matter must be remitted to the First-tier Tribunal to be heard by a judge other than Judge Beg.

Directions

- (1) The Appellant must notify the First-tier Tribunal as to his requirements for the substantive appeal hearing no later than 4pm on 1 November 2023.
- (2) The Appellant must specify how many witnesses he will be calling for the hearing as well as any language needs which will require a Tribunal interpreter.
- (3) The Appellant should also provide a time estimate for the appeal hearing.

Notice of Decision

10. I therefore set aside the decision of the Judge on the basis of procedural unfairness.

11. I remit the matter back to the First-tier Tribunal to be heard by a Judge other than Judge Beg.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 October 2023