



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

**Case No: UI-2023-002943**  
**First-tier Tribunal No:**  
**EA/03448/2020**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 29 January 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**MR MUHAMMAD JABBAR**  
**(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation**

For the Appellant: No appearance

For the Respondent: Mr M. Parvar, senior Home Office Presenting Officer

**Heard at Field House on 19 January 2024**

**DECISION AND REASONS**

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1. This appeal came before the Upper Tribunal for a second occasion on 19 January 2024, due to the failure by the Sponsor to attend on the last occasion on 29 September 2023 on the basis that he claimed not to have received a hearing notice, as a consequence of which I agreed to adjourn the appeal.
2. On 18 January 2024 the Sponsor, Mr Mazhar Hussain, sent an email to the Field House correspondence email address in the following terms:

*“Hi dear respectfully judge. I’m sorry to inform that due to my unwell health I wouldn’t be able to attend tomorrow hearing for my brother EEU case Mr JABBAR . I was away out of country as soon I came back I find out very severe cold and I wasn’t able to go anywhere.. and when I check I find out I’m having COVID . There fire I request to grant me another hearing date. Many many thanks  
Regards Mr Mazhar Hussain .  
Appeal no : UI-2023-002943.”*

3. In light of the history of this appeal and in the absence of any corroborating evidence I am not prepared to take this correspondence at face value.
4. The issue before the Upper Tribunal for consideration is whether or not there is an error of law in the decision and reasons of First tier Tribunal Judge Bulpitt, promulgated on 19 July 2021. The Sponsor and brother of the Appellant, Mr Mazhar Hussain, sought permission to appeal to the Upper Tribunal out of time on 14 June 2023, on the basis that he had never received the notice of hearing for an appeal hearing on 7 July 2021 at Hatton Cross, after he had attended the Tribunal on 17 June 2021, which was adjourned due to the fact that there was no interpreter booked.
5. Permission to appeal was granted by DUTJ Parkes on the basis that:  
  
*“The grounds argue that the Sponsor had not been informed of the hearing date for the Appellant's case. This may amount to an error of law but the service of notices by the Tribunal on the Appellant, Sponsor and the Respondent will need to be available to the Upper Tribunal for the matter to be addressed fully.”*
6. However, I note that, in granting permission to appeal, the Judge treated the application as being in time and so did not appear to appreciate that in fact the application was being made almost 2 years later.
7. When the appeal came before the Upper Tribunal on 29 September 2023, there was no appearance by or on behalf of the Appellant. The address on the application for permission to appeal drafted by the Sponsor is [160 \*\*\*\*\* Close], which is where he was residing on 14 June 2023. The hearing notice was sent to that address on 12 September 2023. My clerk also informed me that the system showed that a hearing notice was sent to that address on 17 June 2021 in relation to the hearing before the First tier Tribunal.
8. However, my clerk was able to track down and speak to the Sponsor, who stated that he had moved and was now living at

[35 \*\*\*\*\* Avenue]; that he was unaware of the hearing today and wished to pursue the appeal. In these circumstances and given that Mr Tufan did not oppose the adjournment of the hearing, I adjourned pursuant to paragraph 2(2)(c) of the Tribunal Procedure (Upper Tribunal) Rules 2008 in order to ensure that the Sponsor is able to participate in the hearing and had clearly not abandoned the appeal.

9. I issued directions which stated in terms that the Sponsor was required to attend the hearing on the next occasion and that, given the history of the appeal, any further failure to appear would result in the appeal being struck out. The directions also made clear that the Sponsor should come prepared to explain why, given the address he provided in the application for permission to appeal on 14 June 2023 is the same address that the hearing notice was sent to by the First tier Tribunal on 17 June 2021, he says that he did not receive that notice of hearing.
10. However, whilst I am not convinced in the absence of any evidence, that the Sponsor was genuinely unable to attend the Upper Tribunal hearing today, there is another preliminary issue which disposes of this appeal.
11. As noted at 6. above in granting permission to appeal the judge overlooked the fact that the application was almost two years out of time and no application had been made to extend time so as to admit the application out of time. Therefore, it is incumbent upon me to consider this issue of my own volition, applying the principles set out in R (on the application of Onowu) v First-tier Tribunal (Immigration and Asylum Chamber) (extension of time for appealing: principles) IJR [2016] UKUT 00185 (IAC):

*"13. At [93] of its decision in Secretary of State for the Home Department v SS (Congo) & Others [2015] EWCA Civ 387, the Court drew together the learning from Mitchell, Denton and Hysaj, in these terms:*

*"...a Judge should address an application for relief from sanction in three stages, as follows:*

*i) The first stage is to identify and assess the seriousness or significance of the failure to comply with the rules. The focus should be on whether the breach has been serious or significant. If a judge concludes that a breach is not serious or significant, then relief will usually be granted and it will usually be unnecessary to spend much time on the second or third stages; but if the judge decides that the breach is serious or significant, then the second and third stages assume greater importance.*

*ii) The second stage is to consider why the failure occurred, that is to say whether there is a good reason for it. It was stated in Mitchell (at para. [41]) that if there is a good reason for the default, the court will be likely to decide that relief should be granted. The important point made in Denton was that if there is a serious or significant breach and no good reason for the breach, this does not mean that the application for relief will automatically fail. It is necessary in every case to move to the third stage.*

*iii) The third stage is to evaluate all the circumstances of the case, so as to enable the court to deal justly with the application. The two factors specifically mentioned in CPR rule 3.9 are of particular importance and should be given particular weight. They are (a) the need for litigation to be conducted efficiently and at proportionate cost, and (b) the need to enforce compliance with rules, practice directions and court orders..."*

12. Applying those principles, the failure to comply with the Rules by making an in-time application for permission to appeal to the Upper Tribunal is very significant, given that the decision and reasons of the First tier Tribunal was issued on 19 July 2021 and the application for permission to appeal was not made until 14 June 2023, almost 23 months later. No explanation has been provided by the Sponsor for this excessive delay, therefore, no good reason has been put forward as to why time to admit the application out of time should be extended. In light of the third factor and that this appeal has been ongoing since 14 February 2020, this is clearly not effective and proportionate to the costs of the public purse of keeping the appeal in the system. Consequently, I consider that the Rules should be enforced in the particular circumstances of this case, particularly bearing in mind the absence of any evidence to support the Sponsor's contentions as to his reasons for repeatedly failing to appear to prosecute his brother's appeal.
13. For the reasons set out above, I refuse to extend time so as to admit the application for permission to appeal out of time, with the consequence that there is no appeal before the Upper Tribunal.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

19 January 2024