



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002700
First-tier Tribunal No:
PA/00828/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 September 2024

Before

UPPER TRIBUNAL JUDGE MEAH

Between

UA
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for Home Department

Respondent

Representation:

For the Appellant: Ms N Paramjothi, Counsel,
For the Respondent: Mr A Tain, Senior Presenting Officer

Heard at Field House on 16 September 2024

DECISION AND REASONS

Introduction and Background

1. The appellant appeals against the decision of First-tier Tribunal Judge McAll promulgated on 09 November 2023 ("the decision"). By the decision, the Judge dismissed the appellant's appeal against the respondent's decision dated 27 April 2023, refusing her claim for asylum/international protection.

The Grounds

2. The grounds aver a procedural error amounting to a material error of law in that the appellant was not aware of the date of hearing for her appeal before the First-tier Tribunal hence she did not attend the hearing. She had also nominated representatives were also unaware of the date of hearing so they did not attend the hearing either.
3. Permission to appeal was refused by First-tier Tribunal Judge Bulpitt 03 May 2024, in the following terms:

“1. The application is in time and discloses no basis for reviewing the Judge’s decision in accordance with rule 35 First-tier Tribunal (Immigration and Asylum) Procedure Rules.
2. The grounds assert that there was a procedural irregularity because the Judge heard the appellant’s appeal in the absence of the appellant. By virtue of rule 29 of the Tribunal’s Procedure Rules the Judge was entitled to hear the appellant in the appellant’s absence if he was satisfied that reasonable steps had been taken to notify the appellant of the hearing and that it was in the interests of justice to proceed with the hearing. The Judge explains at [5] and [6] why he was satisfied that reasonable steps were taken to inform the appellant of the hearing and why it was in the interest of justice to proceed in the appellant’s absence. These were decisions that open to the Judge and are adequately explained in the decision. No arguable procedural irregularity is identified by the assertion that despite the notices and emails sent to the address provided by the appellant, she was not aware of the hearing date.”

4. The renewed application to the Upper Tribunal was granted by Deputy Upper Tribunal Judge Haria as follows:

“1. The appellant is a national of Sri Lanka. She seeks permission to appeal the decision of First-tier Tribunal Judge Mcall dated 9 November 2023 dismissing her protection appeal. The appellant’s husband and her adult children are dependent on the appellant’s appeal.
2. The grounds assert that there was a procedural irregularity as neither the appellant nor her representatives received notice of the hearing and the Judge proceeded to hear the appeal on the mistaken basis that the appellant was unrepresented and in the absence of the appellant or her representative.
3. Although the Judge at [5] and [6] explains why he was satisfied that reasonable steps had been taken to inform the appellant of the hearing and why it was in the interests of justice to proceed in the appellant’s absence. The Judge appeared to be unaware that the appellant had instructed Sriharans Solicitors to act on her behalf. The appellant’s representative has produced a copy of a letter dated 28 September 2023 notifying the First-tier Tribunal that they had been instructed by the appellant.
4. It is arguable that the Judge erred in proceeding with the hearing in the absence of the appellant or her representative on the basis that the appellant had been notified of the hearing and had chosen not to attend”.

Discussion and conclusions

5. Following preliminary discussions it was accepted that the appellant had instructed solicitors on the 28 September 2023. However, the First-tier tribunal had omitted to note this on their records and this appeared to have resulted in the Notice of Hearing not being sent to the representatives who has come on the record. The appellant also claimed that she did not receive notification of either the case management review hearing that had been set down for a date

in October 2023 and/or the notice for the substantive hearing set for 01 November 2023. The chronology of events as explained by Mr Paramjothi in his grounds, and then at the hearing, indicated that the appellant was attempting to fully engage with the appeal and there was no reason, in the light of this engagement, that she would then not attend either of the hearings.

6. Mr Tain stated it was helpful to ventilate the chronology of events leading up to the hearing and the appellant's lack of attendance, and he did not seek to go behind the explanation given by Mr Paramjothi. I clarified whether he was conceding that there was, therefore, a procedural error amounting to a material error of law in the Judge's decision to have proceeded to hear and decide the matter in the absence of the appellant and/or her nominated representatives. Mr Tain conceded that there was a material error of law.
7. I am satisfied that this is a concession which was fairly and sensibly made. The Judge's decision to proceed was unfortunate as was the omission by the First-tier Tribunal not noting the new representatives who had come on the record long before the hearing dates in October and November 2023, resulting in the notices of hearing not being sent to or reaching them. I also accept that the appellant did not receive either of the notices herself given the level of engagement with the appeal before and after the hearings, hence the only reasonable explanation for this was likely to be that she was unaware of these dates.
8. I therefore set aside the decision of the Judge owing to procedural errors resulting in a material error of law.
9. Applying **AEB [2022] EWCA Civ 1512** and **Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC)**, I have considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statement. I consider, however, that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process.

Notice of Decision

10. The decision of the First-tier Tribunal sent to the parties on 09 November 2023, involved the making of a material error of law. It is set aside in its entirety.
11. The appeal is remitted back to the First-tier Tribunal sitting at Birmingham to be heard by any judge other than First-tier Tribunal Judge McAll.

Anonymity

12. The Anonymity Order made by the First-tier Tribunal is maintained.

S Meah
Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 September 2024