



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/15616/2016

THE IMMIGRATION ACTS

Heard at Field House
On 4th January 2019

Decision & Reasons Promulgated
On 1st February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR LEON ARICK JOSEPH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Iqbal (Counsel)
For the Respondent: Mr S Walker (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Abebrese, promulgated on 1st June 2018, following a hearing at Taylor House on 14th May 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, and was born on 17th April 1982. He appealed against the decision of the Respondent dated 7th June 2016 refusing his claim to remain in this country on the basis of his family life and private life under Article 8 of the ECHR.

The Judge's Findings

3. The judge found himself in a situation where the Appellant, and his witnesses, had not attended. Nor, was there an updated bundle of documents on the Appellant's behalf submitted to the Tribunal. As the judge observed,

"The Appellant did not attend the hearing and neither was he represented. This matter was before the Tribunal on 6th December 2017 when the Appellant gave an undertaking that he would update the Tribunal regarding his claim for international protection" (paragraph 13).

4. The judge went on to say, importantly, that "the Appellant has not responded to the Notice of Appeal in respect of his nonattendance at the hearing" (paragraph 14). The judge went on to dismiss the appeal on the basis that "the Appellant had not made himself available for cross-examination" (paragraph 15), and that "the Appellant has not provided evidence before me and therefore his evidence has not been tested and subjected to cross-examination by the Respondent" (paragraph 19). It was also the case that "none of the evidence of the witnesses was tested in cross-examination" (paragraph 20), because they too had not attended the hearing.

Grounds of Application

5. The grounds of application state that the Appellant and his witnesses did not attend, and nor was he represented, because he was not served with a notice of hearing. He had attended on 6th December 2017, together with his witnesses, and his family members, and he would have had no reason not to attend this time as well, had he been served with a notice of hearing. Neither was his solicitor served with such a notice.
6. On 2nd October 2018 permission to appeal was granted on the basis that it was arguable that the decision reached was procedurally unfair.

The Hearing

7. At the hearing before me, there was agreement between Mr Walker, the Senior Home Office Presenting Officer, and Mr Iqbal, who arrived to represent the Appellant, that there was indeed no evidence that a notice of hearing had been served upon either the Appellant or his legal representatives. This was a crucially important matter because the judge himself had come to the view that "the Appellant has not responded to the Notice of Appeal in respect of his nonattendance at the hearing" (paragraph 14). However, Mr Walker more than once confirmed that he could not demonstrate that a notice of hearing had indeed been served upon the Appellant or his representative.
8. For his part, Mr Iqbal submitted that given that the reason why the appeal was dismissed was very largely on account of the Appellant and his witnesses not tendering themselves up for cross-examination, and there had to be an error of law.

9. Both sides were agreed that the appropriate course of action was now for this matter to be remitted back to the First-tier Tribunal. That being so, this is how I dispose of this appeal.

Notice of Decision

10. The decision of the First-tier Tribunal involved the making of an error on a point of law such that it falls to be set aside. I set aside the decision of the original judge. My reasons are that the Appellant and his legal representatives have not been served with a notice of hearing and to that extent, through no fault of the judge at first instance, the hearing before him has turned out to be procedurally unfair.
11. Accordingly, the proper course of action now is to remit this matter back to the First-tier Tribunal pursuant to practice statement 7.2(a) of the practice statement.
12. No anonymity direction is made.
13. This appeal is allowed.

Signed

Date

Deputy Upper Tribunal Judge Juss

24th January 2019