



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/01740/2018

THE IMMIGRATION ACTS

Heard at Birmingham CJC

**Decision & Reasons
Promulgated
On 16 May 2019**

On 3 May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**NATNAEL [Z]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Masih of Counsel, instructed by Tann Law Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Fox promulgated on 1 August 2018, brought with permission granted by First-tier Tribunal Judge Doyle on 4 September 2018.
2. The issue before the Upper Tribunal today is essentially a procedural issue and in the circumstances I do not propose to rehearse the personal details or the background immigration history of the Appellant.

3. The Appellant failed to attend the hearing before the First-tier Tribunal listed on 22 June 2018. Shortly prior to that hearing the Appellant's then representatives wrote to the Tribunal applying for an adjournment. I have before me two witness statements from a caseworker dated respectively 24 April 2019 and 1 May 2019. The deponent speaks as to the circumstances of the making of the application for an adjournment and why it was made by way of letter sent by first class post rather than by way of facsimile transmission.
4. The Tribunal file - which was before the First-tier Tribunal Judge - records the adjournment application letter as being received by the Tribunal only on the day before the hearing. The evidence suggests that the letter was posted on Friday 15 June 2018 and received by the Tribunal on the following Thursday, 21 June 2018. In the circumstances the Tribunal file records that a decision was made not to grant an adjournment, although necessarily the Appellant would have been at liberty to pursue an application for an adjournment before the First-tier Tribunal.
5. However, the Appellant did not attend the hearing, and neither did anybody appear to represent his interests. In the circumstances, and there being no apparent explanation for the non-attendance, Judge Fox proceeded to deal with the appeal on the basis of submissions only - brief submissions were heard from the Respondent's representative who essentially relied upon the 'reasons for refusal' letter in the case.
6. The Appellant's appeal was subsequently dismissed on all grounds by the First-tier Tribunal.
7. The Appellant's challenge is one of procedural unfairness, premised on an assertion that there had in fact been a communication from the Tribunal Service to the Appellant's representatives ahead of the hearing indicating that the appeal was indeed adjourned. It was in reliance upon such communication that no arrangements were made for attendance or representation on 22 June 2018. The witness statements from the caseworker is entirely consistent with this account and refers to telephone calls to the Tribunal's customer services.
8. Mr Mills on behalf of the Respondent, having had the opportunity to consider the witness statements, indicated that he did not seek to dispute the facts alleged, and was content to accept that the Appellant's representatives - for whatever reason - had received a communication from the Tribunal that was understood to indicate that the appeal had been adjourned.

9. I do not propose to go behind that concession, and accordingly accept it.
10. In the circumstances I find that the Appellant was given to understand from the Tribunal Service that his appeal had been adjourned, and that is the explanation for his non-attendance. The circumstances constitute procedural unfairness, such that there is a material error of law. In consequence the decision of First-tier Tribunal Judge Fox is set aside.
11. The decision in the appeal should now be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Fox with all issues at large. Further to discussions with the representatives I issue the following Directions:

Directions

- (i) The appeal should not be relisted before the First-tier Tribunal before 1 July 2019.
- (ii) All such evidence as the Appellant seeks to rely upon should be filed and served by 17 June 2019 in a consolidated bundle, indexed and paginated.
- (iii) The Tribunal is to arrange for an interpreter in Amharic.

Notice of Decision

12. The decision of the First-tier Tribunal is vitiated for material error of law and is set aside.
13. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Fox with all issues at large.
14. No anonymity direction is sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: **14 May 2019**

Deputy Upper Tribunal Judge I A Lewis