



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

Appeal Number: VA/19414/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 27 January 2015**

**Decision Promulgated
On 24 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MS GA BLACK

Between

MR MUHAMMAD MUMTAZ

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Nadia Mehboob Khan (sponsor)

For the Respondent: Mr E Tufan (Home office presenting officer)

DECISION AND REASONS

1. This is an appeal against a decision of the First-tier Tribunal (Judge Froom) promulgated on 14th October 2014 in which he dismissed the appeal on human rights grounds under Article 8 ECHR.

Background

2. This was a family visit appeal with a restricted right of appeal to race relations grounds or human rights grounds. The Appellant requested an oral hearing. The Tribunal determined the appeal in the absence of the parties having ascertained that the Sponsor and Appellant had been properly served with the notice of hearing [8]. And further decided that the Sponsor had not attended for the hearing [8].

Grounds

3. The grounds of appeal assert that the Sponsor had in fact attended for the hearing on 10th October 2014 and that he was in the Court building until 3 pm. He was then informed that the Tribunal heard and dismissed the matter. There was unfairness to the Appellant as the Sponsor was unable to give evidence in support.
4. The Respondent opposed the appeal in a Rule 24 response.

Permission

5. Permission was granted by First-tier Tribunal Judge Mcdade on 9th December 2014. He stated that “ the Appellant and Sponsor need to be in a position to prove that the Sponsor had attended at the hearing centre and may wish to consider contacting the hearing centre to obtain any evidence of this prior to an error of law hearing. In the meantime I give the Appellant the benefit of the doubt and I hold that because of the possibility of an error on the part of the Tribunal there is an arguable error of law in not hearing the case with the Sponsor present. “
6. At the hearing before me the Appellant was not represented. Mr and Mrs Khan, the Sponsors attended in person. I explained the procedure that would be followed. Mrs Khan expanded on the grounds of appeal. I asked if they had been able to find any evidence to show that the Sponsor attended the hearing centre. Mrs Khan stated that she had sent an email but she did not have a copy of it with her.
7. In the court file I found an email chain which included an email dated 10th October 2014 from the Sponsor setting out the position and complaining to the Tribunal that the hearing proceeded in the Sponsor’s absence despite his having attended all day. I read out the contents of the email. I am satisfied that it is consistent with the account given in the grounds of appeal and by Mrs Khan. There was no response to the email in the file from the Tribunal.
8. On the basis of that evidence I am satisfied that the Appellant has established that the Sponsor was at the Tribunal for the hearing. This was not disputed by Mr Tufan. However, he submitted that in the event that the appeal was restricted to and dismissed on human rights grounds, the error was not material. He could think of no evidence that the Sponsor could have given that would have altered the outcome to establish that Article 8 was engaged.
9. I am satisfied that there was a procedural error of law that amounted to unfairness to the Appellant, who had requested an oral hearing and his

Sponsor had attended the hearing centre intending to give evidence in support. I take into account that the Appellant was not legally represented. Whilst acknowledging that the Sponsor did not produce any witness statement which would have been helpful. It cannot be decided without hearing evidence from the Sponsor whether or not that evidence has any impact on the outcome of the appeal, regardless of the restricted right of appeal. The Sponsor ought to have the opportunity to give evidence as to family life with the Appellant. Further notwithstanding the restricted right of appeal I observe that the Tribunal made no findings as to the extent to which the Appellant failed to meet the rules as a family visitor, which may be relevant considerations under Article 8.

DECISION

10. Accordingly I am satisfied that there is a material error of law following a procedural irregularity that lead to unfairness. The decision is set aside. The appeal is to be reheard at Hatton Cross (excluding Judge Froom) on a date and time to be notified.

NO ANONYMITY ORDER MADE

Signed Date 27.1.2015

GA BLACK
Deputy Judge of the Upper Tribunal

NO FEE AWARD

Signed Date
27.1.2015

GA BLACK
Deputy Judge of the Upper Tribunal