



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

Appeal Number: AA/02675/2015

THE IMMIGRATION ACTS

Heard at : Field House

On : 9 March 2016

**Decision & Reasons
Promulgated**

On: 18 March 2016

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**ZS
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Pakistan born on [] 1990. He arrived in the UK on 14 May 2011 and entered with leave as a Tier 4 Student Migrant valid until 6 September 2012. He was subsequently granted further leave until 15

August 2014. On 13 August 2014 he claimed asylum. His claim was refused on 4 February 2015 and a decision was made to refuse to vary his leave and to remove him from the UK.

2. The appellant appealed against that decision. His appeal came before First-tier Tribunal Young on 16 June 2015. At the hearing there was no appearance by or on behalf of the appellant. The judge proceeded in his absence and, in his decision of 30 June 2015, made adverse credibility findings against the appellant, rejecting his claim on the basis of the reasons given by the respondent and finding that he would be at no risk on return to Pakistan and that his removal would not breach his human rights. The appeal was dismissed on all grounds.

3. Permission was sought on behalf of the appellant to appeal to the Upper Tribunal, on grounds of procedural unfairness. It was asserted in the grounds that the appellant was unaware of the hearing as he had left his address some months ago and had expected his solicitors to inform the Tribunal of his new address. Had he known of the hearing he would have attended and could have addressed the discrepancies relied on by the respondent and produce evidence in support of his claim. He had only become aware of the hearing when the decision was forwarded to him by the occupier of his former address.

4. Permission to appeal was granted on 14 August 2015.

Appeal hearing in the Upper Tribunal

5. At the hearing there was no appearance by or on behalf of the appellant. Having consulted the Tribunal's records and upon Mr Jarvis' further enquiries into the Home Office records, I was able to ascertain the following history:

6. The address held by the Tribunal was the same address given by the appellant to the respondent when he claimed asylum and which is still the address held by the respondent. The refusal of his asylum claim was notified to his solicitors at that time, Zoi Biderberg Law Practice. Notice of Appeal was lodged by those solicitors, with the appellant's address given as c/o the solicitors. A Notice of Hearing for a pre-hearing review and the full hearing was sent to Zoi Biderberg Law Practice and to the appellant c/o his solicitors, on 17 February 2015, giving the date of the full hearing as 16 June 2015, and was accompanied by Directions. On 18 March 2015 Zoi Biderberg Law Practice informed the Tribunal that they were no longer acting for the appellant, but giving his last-known address. That was the address to which the Tribunal then sent the decision in the appeal and is the same address now held by the Tribunal.

7. The appellant claims, in his grounds, that he had no notice of the hearing and that he received the decision in the third week of July 2015 when it was forwarded to him by the occupier of his former address.

8. The Tribunal's records show that he then instructed new solicitors, Norman Lewis & Co Solicitors, on 25 July 2015, who made the application for permission to appeal to the Upper Tribunal on 4 August 2015. In that application the appellant's address was given as Dungavel IRC, an immigration detention centre. The Tribunal's decision in the permission application was sent to the appellant at Dungavel IRC and to his representatives Norman Lawson & Co Solicitors, on 12 August 2015. In a letter dated 17 August 2015, Katani & Co advised the Tribunal that they were acting for the appellant and requested a copy of the decision in the appellant's appeal. The First-tier Tribunal's decision and the grant of permission were sent to them on 27 August 2015. In the meantime, the appellant was released from Dungavel on 21 August 2015. On 23 December 2015 Katani & Co advised the Tribunal that they had ceased acting for the appellant from 9 October 2015.

9. On 26 January 2016 the Detained Escorting & Population Management Unit (DEPMU) at the Home Office informed the Tribunal that the appellant had no fixed address but provided the last known address on their system (which was the address held by the Tribunal). The Notice of Hearing for the hearing today was sent to the appellant, on 9 February 2016, at his last known address. It was not returned to the Tribunal. As Mr Jarvis informed me, that was the same address held by the Home Office for the appellant and their records showed that he was of no fixed abode from July 2015.

10. In light of the above I could not be certain that the appellant had received today's Notice of Hearing, but I was satisfied that the Upper Tribunal had, nevertheless, properly served the Notice of Hearing on the last-known address held for him. There was clearly little point in adjourning the proceedings. I therefore proceeded with the appeal and heard submissions from Mr Jarvis.

11. Mr Jarvis submitted, with regard to the appeal before the First-tier Tribunal, that if the Tribunal had served the Notice of Hearing on the appellant's last-known address, there was no procedural unfairness in the appeal before the First-tier Tribunal.

Consideration and findings.

12. In his grounds, the appellant claims to be a victim of procedural unfairness through no fault of his own, having left the address held by the Tribunal some five or six months previously (which would have been February or March 2015) but in the expectation that his solicitors, with whom he had provided his change of address, would have notified the Tribunal. However that is clearly inconsistent with the fact that his solicitors at the time, Zoi Biderberg Law Practice, when informing the First-tier Tribunal on 18 March 2015 that they were no longer acting for the appellant, gave his address as the same address previously and currently held by the Tribunal. Furthermore, as the respondent, in her Rule 24 response submitted, there is no evidence to support the appellant's assertion that he had notified his solicitors of his change of address. There is no reason why the appellant, through his new solicitors, could not

have sought confirmation of his instructions about his change of address from his former solicitors.

13. In addition, it is clear that the Notice of Hearing for the appeal before the First-tier Tribunal was sent to the appellant c/o his solicitors, as well as to his solicitors and that they were still representing him at that time. Accordingly, the Notice of Hearing was properly served by the Tribunal. That was indeed a matter considered by Judge Young, and recorded at [9] to [13] of his decision, when deciding whether or not he should proceed to hear the appeal in the appellant's absence.

14. It is also relevant to note that the appellant has made no effort, since his application for permission, to inform the Tribunal or, it seems, the respondent, of his current address following his release from detention, either through his solicitors Katani & Co. or directly himself.

15. In the circumstances it seems to me that it cannot be said that the appellant has been a victim of procedural unfairness through no fault of his own. Had he remained in contact with the Home Office and the Tribunal following his release from detention and provided an updated address, and had he then appeared before me, I may well have considered otherwise or at least been prepared to give him the benefit of the doubt. However that is not the case and I therefore see no reason to set aside the decision of Judge Young.

16. Judge Young gave careful consideration to the appellant's absence, he provided reasons for proceeding with the appeal in his absence and he was entitled to do so. He was entitled to rely on the reasons given by the respondent for refusing the appellant's claim, including various inconsistencies in the appellant's account, and was entitled to reach the conclusion that he did in the appellant's appeal. I find no errors of law in his decision and find that there was no procedural unfairness giving rise to an error of law.

DECISION

17. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed
Upper Tribunal Judge Kebede

Date