



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

Appeal Number: DA/00428/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 19 February 2016**

**Decision & Reasons Promulgated
On 24 February 2016**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**FARID CHAOU
(Anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr Parkinson – Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Grimmett promulgated on the 11 December 2015 in which the Judge dismissed the appellants appeal against the order for his deportation from the United Kingdom.
2. Through no fault of Judge Grimmett it has been found that the determination must be set aside as a result of a procedural irregularity sufficient to amount to an error of law material to the decision.

3. On 19 October 2015 notice of the hearing was posted to the appellant at HM Detention Centre at Campsfield House in Oxfordshire informing him of the hearing listed for 8 December 2015 at the Victoria Law Courts in Birmingham. A request for the appellant to be produced was made. On the day the appellant was not produced and so failed to attend. Judge Grimmett records in the determination:

“12. The Appellant was in detention at the time of the hearing and arrangements were made for him to be brought to the Hearing Centre in Birmingham. However, those who were providing the travel arrangements for him faxed the court on the day of the hearing to say that he had refused to be transferred from Harmondsworth Immigration Removal Centre where he currently resides to Campsfield Immigration Removal Centre on the day prior to the hearing. Apparently the transfer was so that he could be produced at court in good time for his court hearing. I was satisfied that he was aware of the hearing, having been notified of it by the tribunal and by the attendance of those seeking to remove him to Campsfield on 7th December and I heard the appeal.

13. At about 1.30pm, after the hearing was completed, there was a telephone message from the Appellant to say that the men who were to move him told him that there was no need for him to travel to Campsfield. On the day after the hearing a fax was received from the Appellant which said that the security officer had told him there had been a mistake and that he did not need to travel. I do not consider it appropriate to adjourn the appeal as those attempting to move the Appellant had notified the Tribunal prior to the hearing that he did not wish to attend and the Appellant took no steps until the afternoon of the day of the hearing to notify the Tribunal that he was not attending.”

4. The fax referred to by Judge Grimmett advised the First-tier Tribunal that the appellant was not being produced as ordered as he had refused to be transferred from Harmondsworth IRC to Campsfield on 7 December 2015 so that he could be produced in court in good time for his appeal hearing on 8 December 2015.

5. A letter from Lawrence Lupin Solicitors to the First-tier Tribunal, faxed on 8 December 2015 at 13:08 hours, has attached a letter signed by the appellant in the following terms:

“Unfortunately I was not able to attend my Deportation hearing today. I am now at Harmondsworth IRC. Yesterday a security officer came and said that I was being transferred back to Campsfield IRC but then said that it was a mistake and I was staying here.

I request for my deportation hearing for today being adjourned so that I could attend. I am also in a process of instructing solicitor who would represent me at my deportation hearing.

Yours faithfully”

6. The appellant has been consistent in relation to a key aspect of his claim which is that after being notified of the intention to transfer he was told by an officer of the Detention Centre that this had been in error and that he was to remain at Harmondsworth. As the appellant is in immigration detention he could not attend the hearing unless transferred and produced under escort.
7. There is clearly a dispute of fact between the appellant's account of why he did not attend the hearing and that recorded in the determination. The appellant again advanced at today's hearing his claim that he was happy with a transfer as Campsfield is nearer Manchester where his partner lives.
8. The grounds of appeal to the Upper Tribunal sought resolution of the dispute by the appellant giving oral evidence that could be tested by cross-examination, consideration of Judge Grimmett's record of proceedings, consideration of the fax sent to the Tribunal on the day of the hearing stating that the appellant refused to be moved, and evidence from the writer of the fax and officer who attended the appellants room on 8 December 2015 at 7.00AM.
9. It was possible to hear from the appellant who repeated his claim and wish to have attended the hearing to 'speak to the judge'. The documentary evidence has all been considered but there is nothing further from the author of the fax informing the Tribunal that the appellant was not going to be produced or from the officer who it is said informed the appellant there had been a mistake and that he was to remain at Harmondsworth.
10. Mr Parkinson was asked whether he had anything to disprove the appellants claim but he did not. Mr Parkinson also noted that the appellant has referred to a partner and two children and that there may be Article 8 issues that need to be considered.
11. As a result of the failure, for whatever reason, of the appellant to be produced at the hearing he has been denied the opportunity to participate in the appeal process and to put his case to a judge. The determination of Judge Grimmett shall be set aside. Although the analysis of the position in EU law is well reasoned and may in other circumstances be sustainable, there shall be no preserved findings.
12. The following directions shall apply to the future conduct of this appeal:
 - i. The determination of Judge Grimmett shall be set aside with no preserved findings.
 - ii. The appeal shall be heard by a Designated or Salaried Judge of the First-tier Tribunal nominated by the Resident Judge in a secure court in Manchester at 10.00am 25 May 2016, time estimate 4 hours.

- iii. The appellant must send to the First-tier Tribunal and the respondent copies of all the written evidence he intends to rely upon. He must also provide a written statement setting out in clear terms why he believes he should not be deported. In relation to his human rights claim he must set out the nature of the private and/or family life being relied upon and his case in relation to the effect on his family/private life if he is removed to France. The same must be provided by any person coming to the Tribunal to support his case such as his partner. This information to be provided no later than 4.00pm 11 May 2016 or earlier date if so advised by the First-tier tribunal in the event if a change to the hearing date.
- iv. No interpreter is required.
- v. Any further case management directions shall be provided by the First-tier Tribunal sitting at Manchester.

Decision

13. The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. The case shall be remitted to the First-tier tribunal sitting at Manchester for further hearing.

Anonymity.

14. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 19 February 2016