

Upper Tribunal (Immigration and Asylum Chamber) EA/03313/2015

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House
On 22 November 2017

Decision & Reasons
Promulgated
On 4 December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

MR FABIO PETER JOHN FERNANDES (ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

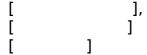
For the Appellant: No appearance or representation

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from a decision of First-tier Tribunal Judge Chowdhury, promulgated on 16 February of 2017. As is immediately apparent on the face of the decision, the appellant did not appear and was not represented. The determination is very brief and comes to the conclusion that there was no evidence before the Tribunal that the appellant was exercising treaty rights under the EEA Regulations of 2006 notwithstanding assertions in the documentation that the appellant may have been working on a cash in hand basis.

- 2. The matter came before First-tier Tribunal Judge Farrelly on 6 September of 2017 when permission to appeal was granted. Judge Farrelly noted that the application was somewhat unfocused but gave particular regard to the assertion that the appellant had not received notice of the hearing which had been apparently sent to a previous address. An envelope was returned apparently marked 'return to sender' or similar.
- 3. So far as today's proceedings are concerned, the appellant sent a letter to the Upper Tribunal at Field House dated 7 November of 2017 which had various enclosures attached to it. Regrettably this documentation was not also sent to the Secretary of State. In substance, the appellant seeks to reargue the substantive merits of the matter. He asks to be excused from his attendance here today and invites the Upper Tribunal to determine the appeal on the papers. He makes a number of observations about inaccuracies in the paperwork. He says first that his name is wrongly spelt as "Fabio" whereas it should in truth be "Savio" (something borne out by a copy identity document annexed to his statement). He also invites the court to amend his correspondence address to read:



for all future communications.

- 4. Before getting into the substance of any alleged error of law, on the admittedly limited evidence which I have seen, there is a distinct likelihood that the notice of the hearing of the First-tier Tribunal never in fact came to the appellant's attention. That is evidenced by the marking on the envelope in which it was sent out, and also by the unlikelihood that this particular appellant would have voluntarily absented himself when he was otherwise fully engaged in the proceedings.
- 5. Mr Duffy for the Secretary of State is not in a position to mount any positive case as to the receipt or otherwise of the notice of hearing and very fairly says to me this morning that if the Tribunal is satisfied that notice was ineffective then the proper course is to set the decision aside and to remit it to the First-tier Tribunal. Procedural fairness gives to any appellant the right to be heard and a failure in the giving of notice of the hearing clearly breaches that procedural requirement, albeit that no blame attaches to the administrative staff in the First-tier Tribunal or to the Secretary of State.
- 6. In the circumstances, I set aside the decision of the First-tier Tribunal and remit the matter to be heard afresh.
- 7. I make one final observation. This is the type of the case where the personal attendance of the appellant is crucial in order that the Tribunal can come to a view on the issues which are raised which includes assessing credibility. It would not be appropriate to dispose of this matter on the papers. I wish to communicate to the appellant the need for him to attend in person when this matter is relisted in the First-tier Tribunal. It

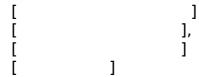
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will place him at a significant disadvantage if he simply proposes to rely on documentation and have the matter dealt with administratively.

8. The appellant is strongly advised to appear in person (whether or not he has legal representation) on the date when this matter is listed for hearing in the First-tier Tribunal.

Notice of Decision

- (1) The appeal is allowed and the decision of the First-tier Tribunal is set aside.
- (2) The matter is remitted to the First-tier Tribunal to be heard afresh by a judge other than by Judge Chowdhury.
- (3) All future correspondence for the appellant should be addressed to:



(4) The appellant is strongly advised to attend the hearing in the First-tier Tribunal.

No anonymity direction is made.

Signed Mark Hill Date 4 December 2017

Deputy Upper Tribunal Judge Hill QC