



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

Appeal Number: PA/05043/2016

THE IMMIGRATION ACTS

Heard in Liverpool

**Determination & Reasons
Promulgated**

On Tuesday 22 August 2017

On Friday 25 August 2017

Before

UPPER TRIBUNAL JUDGE SMITH

Between

**B S M
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs L Barton, Counsel instructed by Jasvir Jutla & Co

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Although an anonymity direction was not made by the First-tier Tribunal, as a protection claim, it is appropriate that a direction is made. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Background

1. The Appellant appeals against a decision of First-Tier Tribunal Judge J Austin promulgated on 11 October 2016 (“the Decision”) dismissing the Appellant’s appeal against the Secretary of State’s decision dated 4 May 2016 refusing his protection and human rights claims.
2. The Appellant is a national of Iraq. He claims to have arrived in the UK on 12 December 2015 and claimed asylum on the same day. He claims to be from Kirkuk. He claims that he is of Kurdish ethnicity. He says he is at risk on return to Iraq because his father was a soldier in the Ba’ath party and that he and his mother were suspected of involvement with that party by the authorities. This part of his claim was rejected by the Respondent. The Respondent accepted that, based on current country guidance, return of the Appellant to his home area would breach Article 15(c) of the Qualification Directive but decided that the Appellant could relocate either to Baghdad or IKR (it being worthy of note that the Appellant left Iraq via Erbil airport and has sisters living in that area).
3. I do not need to deal further at this stage with the substance of the Decision because the Appellant’s challenge to it is a procedural one. In short, he says that for a combination of reasons, he was not aware of the First-tier Tribunal hearing. He had been moved to different accommodation by accommodation agents for the Home Office following an altercation with another asylum seeker. He says that he tried to contact his solicitors to inform them of the move but they did not answer. He also says that he managed to contact the interpreter who acts for that firm who told him that he (the interpreter) would let them know. However, the solicitors came off the record because, unbeknownst to the Appellant, they had lost their legal aid franchise. They therefore did not attend the hearing on his behalf. The Appellant also admits that he did not notify the Tribunal about his move because he was told by the accommodation agents, SERCO, that they would inform the Home Office and he assumed that they would notify the Tribunal.
4. Permission was granted by First-tier Tribunal Judge Nightingale on 25 April 2017, permission having been sought out of time, in the following terms, so far as relevant:-

“[2] The grounds are accompanied by a statement from the appellant for late application and I consider it is in the interests of justice to admit and consider this application.

[3] The statement discloses a catalogue of events which led to the appellant not receiving the notice of hearing. Whilst it is unclear why the appellant did not write to his former solicitors and the Tribunal to notify the change of NASS accommodation, I note that the appellant was informed by NASS that his new address would be forwarded to the

respondent. This is an asylum appeal, where only the highest standards of fairness will suffice. Whilst the Judge could not have been aware of the circumstances, it is arguable that there was a procedural error amounting to an arguable error of law. Permission is therefore granted.”

5. The matter comes before me to decide whether the Decision involves a material error of law based on the above procedural history. In this particular case, if I find an error of law, the appeal must be remitted to the First-Tier Tribunal in order to afford the Appellant the fair hearing of which he has been deprived (if I accept that there has been unfairness which amounts to an error).

Decision and Reasons

6. Mrs Barton drew my attention to the Appellant’s witness statement confirming what he says occurred and why he did not attend the hearing. It is not in issue that the Appellant was indeed moved from his previous accommodation on 9 June 2017 and that he was moved to other accommodation arranged by the Home Office. Mrs Barton also drew my attention to a letter from the Appellant’s previous solicitors which his current solicitors managed to obtain, dated 29 July 2016 informing him that they could no longer act for him as they had lost their legal aid franchise. There is also in the Appellant’s bundle the hearing notice for the CMR and full hearing which is addressed only to those solicitors. Given that by 29 July 2016, the Appellant had been moved from his previous address, it stands to reason that he would not have received the solicitor’s letter informing him that they could no longer act for him.
7. Mrs Barton accepted that the Appellant has not explained why he did not initially contact the Tribunal, a step which he later took, having sought advice from the Asylum Support Housing Service. It is certainly unfortunate that he did not do this earlier but, as Mrs Barton indicated, the Appellant has limited English and did not know what he should do.
8. Mr Bates accepted that the Home Office was aware of the accommodation move. It was notified on 10 June 2016. If the point had arisen and enquiries had been made of the Home Office at the hearing therefore, it would have been confirmed to the Judge that the Appellant was no longer at the address which the Tribunal had on file. However, the Presenting Officer’s minute made no mention of that enquiry having been made by the Judge.
9. The Judge did address the question of an adjournment in the Decision. He did so on the basis that none had been sought but that in any event he would not have granted it. As Mrs Barton pointed out, it is difficult to see how the Judge could reach that conclusion without considering the reasons why an adjournment was sought. Be that as it may, the more important point is that, in considering this, the Judge said the following:-

“[6] In considering whether to adjourn this matter, I had regard to the following matters:

(i) *The appellant has submitted an appeal against the decision to refuse asylum through his appointed solicitors, AJO Solicitors.*

(ii) *the appellant had been given notice of the hearing date and location on 26th*

September 2016 by first class mail to his home address of 13 Grimshaw Street, Darwen BB3 2QJ. Further the appellant had been given notice of the CMR hearing date and location in a similar manner by letter dated 18th July 2016.”

10. Whilst Judge Nightingale was right to observe that the Judge did not apparently know that the Appellant had moved, it seems that no enquiries were made to ensure this remained the position as Mr Bates confirmed that an enquiry of the Home Office would have revealed the true position. As it is, therefore, the Judge’s assumptions underlying his decision that an adjournment was not necessary were factually inaccurate. It is also worth noting in that regard that, by then, to the Tribunal’s knowledge, the solicitors had come off the record (which it is not clear that the Judge appreciated) and that, at least in relation to the 18 July letter, that was not sent to the Appellant but to his former solicitors.
11. As Mrs Barton submitted, and I accept, in an asylum appeal, the utmost standard of fairness is essential given the importance of the substance of the appeal to the Appellant. As Mr Bates pointed out, the grounds do not challenge the substance of the Decision or suggest that there is any error of law in the content. However, the very fact that the Appellant has been deprived of the opportunity to put his case, give oral evidence and submit documentary evidence is of itself sufficient to give rise to an error of law for lack of procedural fairness. The issue of unfairness is the more acute in this particular case since the Appellant was moved within the NASS estate and the fact of his move was known to the Respondent, the other party to the appeal.
12. Whilst Mrs Barton recognised the importance of the overriding objective, she pointed out that this too favours the Appellant since, by reason of the failure of notification of the hearing, he has been deprived of the opportunity to participate fully in the proceedings.
13. For those reasons, I am satisfied that there is an error of law in the making of the Decision because the hearing leading to the Decision was procedurally unfair since the Appellant was not informed of the date of the hearing and was therefore deprived of the opportunity to present his case. Both parties agreed that if I accepted there were an error of law in this case, it would be appropriate to remit the appeal to the First-tier Tribunal; to do otherwise would simply compound the unfairness. Having regard to the Tribunal’s guidance, I accept that it is appropriate in this case for the appeal to be remitted.

DECISION

I am satisfied that the Decision involves an error of law because the Appellant has been deprived of a fair hearing as he was not aware of the hearing date and was therefore unable to attend or be represented. The decision of First-tier Tribunal Judge J Austin promulgated on 11 October 2016 is set aside. The appeal is remitted to the First-tier Tribunal for re-hearing before a different Judge.

Signed



Dated: 25 August 2017

Upper Tribunal Judge Smith