



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/12096/2016

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre
On: 22nd June 2018

Decision & Reasons Promulgated
On: 29th August 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Hafiz Farooq Baig
(no anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: Mr Massod, Counsel instructed by Javid Law Chambers
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Pakistan date of birth 7th May 1976. He appeals with permission the decision of the First-tier Tribunal dated 20th September 2017 to dismiss his human rights appeal.
2. The single ground of appeal is that there has been a procedural impropriety in the disposal of the case.

3. The appeal was originally listed for substantive hearing on the 12th October 2017. The parties were sent Notices of Hearing to this effect on the 11th May 2017. The Appellant, or rather his sponsor wife who is in the UK, planned in accordance with that date. Those plans included the Appellant's wife booking a trip to Pakistan in order to visit the Appellant, attend a family wedding and celebrate Eid. The trip was to be made in September 2017, with the Sponsor returning to the UK in time to attend the hearing.
4. On the 4th August 2017 the Tribunal served amended Notices of Hearing. The date for the appeal was now set for the 6th September 2017, and an attached direction stated that it was to be placed on the 'float list'.
5. It would appear that it took some time for that letter to arrive with the Appellant and his representatives in Pakistan. The Appellant's wife, if she was indeed served (the file is unclear) did not receive it because she was by that time in Pakistan as well.
6. Upon receipt of the new Notice the Appellant (or his representatives) wrote to the Tribunal requesting that the date revert to October, explaining that the Sponsor will not be in the UK on the 6th September 2017. Their letter was dated the 29th August 2017. On the 30th August 2017 the Tribunal sent out a second Notice of Hearing informing the parties that the appeal was indeed to be heard on the 6th September 2017 and that it would be on the 'float list'.
7. Having received this second notice the Appellant's representatives made a telephone call to the Tribunal. The grounds of appeal state that on the 12th September 2017 they were informed, over the phone by a member of Tribunal staff, that their letter had been received, that the request had been actioned, that the case had been de-listed. The Appellant and Sponsor therefore expected that the case would not proceed, and that new Notices of Hearing would be sent out.
8. They were not. The appeal had in fact been listed before Judge Shergill on the 6th September 2017. In the absence of a sponsor or representative Judge Shergill dismissed the appeal on the grounds that the Appellant had not discharged the burden of proof. The determination was sent to the parties on the 20th September 2017.
9. The Appellant submits that there has been an unfairness and that the decision should be set aside.
10. Before me Mr Tan accepted that in the circumstances fairness requires that the decision be set aside. Whilst it may be that there was some misunderstanding either on the part of the member of Tribunal staff, or on the part of the representative, in the telephone call of the 12th September, it is apparent that the Appellant and Sponsor have nothing to gain by failing to attend the hearing. This is an entry clearance appeal so there is little prejudice to the Respondent in the matter being remitted. I agree.

Decisions

11. The determination of the First-tier Tribunal contains an error of law and it is set aside.
12. The parties agreed that the most appropriate disposal, in the circumstances, would be for the matter to be heard *de novo* in the First-tier Tribunal. I agree.
13. There is an order for anonymity.

Upper Tribunal Judge Bruce
23rd June 2018