



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

Appeal Number: IA/10760/2015

THE IMMIGRATION ACTS

Heard at Field House

On 8 December 2017

**Decision & Reasons
Promulgated
On 8 January 2018**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR SYED MOHAMMAD AHSAN SHAH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Ilahi, Wilsons Solicitors

For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Pakistan. Following his appeal against a decision made by the respondent on 25 March 2015 refusing his application for leave to remain, he appealed.
2. The hearing was fixed for 17 March 2015 and on that date came before Judge Greasley of the First-tier Tribunal who in a decision sent on 21 March dismissed it. The appellant did not attend nor did solicitors on his behalf.

3. The only ground of appeal argued before me by Mr Ilahi is that there had been procedural unfairness because neither the appellant, nor his solicitors received the notice of hearing for 17 March. On checking the file, it is clear that notice was not sent to the appellant at the new address he had furnished at a previous hearing.
4. Notice was, however, shown as sent to the appellant's solicitors at the correct address. I reserved my decision so that I could check Tribunal records. Having done so, I cannot exclude that the notice may have been sent to the previous solicitors. There is a History Report dated 21 September 2016 saying that Wilsons were not shown as acting with an entry "I have sent a fax". Then, curiously, there is an entry for the same day stating the representative as Norbert & Co. There is no subsequent entry noting that Wilsons were (or had come onto) on record, even though the sticker on the file gives them as the solicitors. I note also that the appellant attended the last hearing.
5. Given the inconsistencies as between History Records and the hard copy file, I afford the benefit of the doubt to the appellant and conclude that it would be unsafe to find there was effective service of the notice of hearing.
6. Whilst no fault of the First tier Tribunal judge, the defective service of the notice means that there has been procedural unfairness in the appeal process.
7. Accordingly I set aside the decision of the FtT judge and remit the case to the FtT to hear afresh.

Signed

Date: 4 January 2018



Dr H H Storey
Judge of the Upper Tribunal