Upper Tribunal
(Immigration and Asylum Chamber)

RK (Allowed appeals – service on respondent) Albania [2015] UKUT 00331 (IAC)

<u>THE IMMIGRATION ACTS</u>

Heard at Field House	**Determination Promulgated**
On 19 May 2015	
	………………………………

Before

SIR STEPHEN SILBER
UPPER TRIBUNAL JUDGE WARR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

<u>Appellant</u>

and

RK
(Anonymity Direction Made)

<u>Respondent</u>

<u>Representation</u>:

For the Appellant: Mr P Duffy, Home Office Presenting Officer
For the Respondent: Mr A Gilbert, of counsel, instructed by Turpin and Miller (Oxford)

1. Service by the First-tier Tribunal of a determination allowing the appeal on the Presenting Officers' Unit in Cardiff rather than on the Specialist Appeals Team in Angel Square was good service despite what was said to be an agreement to serve all allowed appeals on the Angel Square team.

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2. Accordingly on the evidence before it, the Upper Tribunal upheld the decision of the First-tier Tribunal to refuse to admit the Secretary of State's appeal from the decision of the First-tier Tribunal as the appeal was out of time and it was not in the interests of justice to extend time.

DECISION

1. Following a hearing on 24th April 2014 the First-tier Tribunal allowed the appeal of the respondent (hereinafter referred to as the claimant) from a decision by the Secretary of State to deport him. The claimant is a citizen of Albania who has lived in this country since the age of 16 and he had been granted indefinite leave to remain as a spouse of a British Citizen. They have three children. The determination of the First-tier Tribunal was promulgated on 1 May 2014.

2. The Secretary of State applied for permission to appeal to the First-tier Tribunal. The application for permission was received on 16 May 2014. First-tier Judge Pirotta granted permission, stating simply that the application was in time.

3. On 3rd October 2014 Mr C M G Ockelton, Vice President, and Deputy Upper Tribunal Judge Davidge, sitting as the First-tier Tribunal, found that the question of whether the application was to be admitted had not yet been determined, that it fell to the First-tier Tribunal to determine it in order to complete the consideration of the application and went on to refuse to extend time. The determination was promulgated on 3rd December 2014. The grounds for an extension of time before the First-tier Tribunal were as follows:

   > "It is respectfully asked that the Tribunal extends the time limit for making this application. The main reason for the delay was because the Specialist Appeals Team (SAT) on behalf of the Secretary of State did not receive the determination directly from the Immigration and Asylum Tribunal within the 2 day limit of receipt following the date of the determination as per the agreed procedure. Corroboration of the late receipt of this determination can be seen by the date stamp on the IA60 (see the stamp SAT Admin received 9 May 2014). It would therefore seem that delivery of this determination was delayed prior to arrival in SAT.
   >
   > Having now reviewed the decision, it is considered that there is a fundamental error in the approach of the First-tier Tribunal and that grounds should be lodged. It is considered that the merits of the present application are strong and that the interests of justice should not be jeopardised by what is a relatively minor delay. It is submitted that the delay was not on account of SAT and they have endeavoured to submit these grounds within 5 working days of receipt. An extension of time is respectfully requested."

4. The First-tier Tribunal stated as follows:

   > "4. Investigations have shown that there appears to be an arrangement between the Secretary of State and the Tribunal under which an appeal which is dismissed has its determination sent to the Presenting Officers' Unit, but an appeal which is allowed has its determination sent to the Specialist Appeals Team at Lunar House.

> 5. Whether that arrangement is lawful within the Rules is a matter which may cause some question, but in any event the position in the present case was that the Secretary of State apparently accepted, that the application was made out of time; but despite having had an extra week of having the determination in her hands, made no apparent attempt to speed the submission of the application any more than would have been the case if time had begun to run one week later."

5. The First-tier Tribunal found there was no good reason for extending time and, as required by rule 24(4)(b) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230), did not admit the application.[1] The Tribunal concluded by stating that the Secretary of State had the opportunity of renewing the application for permission to the Upper Tribunal, if so advised.

6. This the Secretary of State did. However, in a further complication, the Upper Tribunal received the application out of time on 10 February 2015.

7. Mr Duffy submitted that the point was a simple one. In effect the Tribunal had an agreement to send all appeals which had been allowed (apart from asylum appeals which had a different procedure) to Angel Square in London. We note that the Secretary of State's grounds point out that the First-tier Tribunal was in error in referring to allowed appeals being sent to Lunar House in Croydon. Such appeals should, it was said, be sent to Angel Square to a centralised team referred to in the annexes to the grounds of appeal variously as "The Specialist Appeals Team" (SAT) or "The Allowed Appeals Admin Team." Mr Duffy referred to an email from the Home Office to HM Courts and Tribunals Service (HMCTS) sent on 10 December 2014 to which was attached "a revised list clarifying where determinations/notices should be sent." In breach of this agreement the Tribunal had sent the decision to the Presenting Officers' Unit in Cardiff where it was received on 2nd May 2014. Such a course would only have been appropriate where the appeal was dismissed. Dismissed appeals were to be notified to the appropriate Presenting Officers' unit for the particular court centre (the First-tier Tribunal had sat in Newport.)

8. The document was then sent by internal mail to Angel Square where it was received on 9 May 2014. The application for permission to appeal was lodged on 16th May which was within 5 working days of receipt at the correct address for service, Angel Square.

9. It was acknowledged that the Cardiff Unit had received the decision on 2nd May and could have faxed it to Angel Square. However, it had been received on a Friday and Monday was a Bank Holiday. The first realistic opportunity to send the decision by internal post was on Tuesday 6th and it would take two to three working days to reach Angel Square.

[1] But see now the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

10. Mr Duffy further acknowledged there was no witness statement to back up the contentions in the grounds of appeal and the annexes. However the grounds had been settled by a senior member of the team. He pointed out that grounds of appeal in deportation cases required sensitive handling and needed to be cleared for example by the Legal Advice Bureau. Grounds were not submitted automatically.

11. Mr Duffy referred to rule 56 of the 2005 Rules which reads, so far as is material, as follows:

> "(1) Every party, and any person representing a party, must notify the Tribunal in writing of a postal address at which documents may be served on him and of any changes to that address.
> (2) Until a party or representative notifies the Tribunal of a change of address, any document served on him at the most recent address which he has notified to the Tribunal shall be deemed to have been properly served on him. …"

12. He submitted that the arrangements with the Tribunal complied with the requirements of rule 56. The Home Office handled 4000 appeals per week and the agreed procedures saved time and money. The procedures worked in the majority of cases and what had happened in this appeal was a slip. Accordingly he submitted in summary that the decision had not been sent to the correct address and in the alternative that there was a good reason for extending time.

13. Mr Gilbert referred to rule 55:

> "55.—(1) Any document which is required or permitted by these Rules or by a direction of the Tribunal to be filed with the Tribunal, or served on any person may be—
> (a) delivered, or sent by post, to an address;
> (b) sent via a document exchange to a document exchange number or address;
> (c) sent by fax to a fax number; or
> (d) sent by e-mail to an e-mail address,
> specified for that purpose by the Tribunal or person to whom the document is directed.
>
> (2) A document to be served on an individual may be served personally by leaving it with that individual.
>
> (3) Where a person has notified the Tribunal that he is acting as the representative of an appellant and has given an address for service, if a document is served on the appellant, a copy must also at the same time be sent to the appellant's representative.
>
> (4) If any document is served on a person who has notified the Tribunal that he is acting as the representative of a party, it shall be deemed to have been served on that party.

> (5) Subject to paragraph (6), any document that is served on a person in accordance with this rule shall, unless the contrary is proved, be deemed to be served—
> (a) where the document is sent by post or document exchange from and to a place within the United Kingdom, on the second day after it was sent;
> (b) where the document is sent by post or document exchange from or to a place outside the United Kingdom, on the twenty-eighth day after it was sent; and
> (c) in any other case, on the day on which the document was sent or delivered to, or left with, that person.
>
> (6) Any notice of appeal which is served on a person under rule 6(3)(b) or 6(4)(b) shall be treated as being served on the day on which it is received by that person.
>
> (7) Where the United Kingdom Representative has given notice to the Tribunal under rule 49 in relation to any proceedings, any document which is required by these Rules or by a direction of the Tribunal to be served on a party in those proceedings must also be served on the United Kingdom Representative."

14. He submitted it was clear from rule 55(4) and (5) that the decision had been served on the Presenting Officers' Unit in Cardiff and that the Presenting Officers represented the Secretary of State. The decision had not been sent simply to the Home Office.

15. Mr Gilbert disputed what was said in the grounds and annexes and in particular pointed out that the email relied upon from the respondent to the Tribunal was dated 10 December 2014. This was after the relevant dates of promulgation in this case. There was no evidence that the procedures were applicable at the time. He further submitted that matters were compounded by subsequent irregularities. As confirmed in an email to the Tribunal on 30 January 2015 those instructing him had contacted the Tribunal on 16, 23 and 30 January to be told that no application for permission to appeal had been received from the Home Office. Accordingly the challenge to the decision of the panel chaired by the Vice President was also out of time. The time limit was 14 days under rule 21(3)(aa)(i). The appeal had been lodged after two months on 10 February. The Home Office had not provided the appellant with the original appeal.

16. Mr Gilbert said the appellant and his family found the procedures extremely stressful. His appeal had been successful and he had thought that there was to be no challenge by the Home Office.

17. Mr Duffy referred to an email from the Home Office Specialist Appeals Team (which incidentally bears the date 10 February 2014) stating that the appeal was lodged by fax on 12 December 2014. Although there was no fax transmission sheet a screen shot was said to show that permission to appeal had been sought as asserted. Mr Duffy acknowledged there was no witness statement to verify this.

18. We reserved our decision.

19. Mr Duffy faces multiple difficulties in this case. The first is that the decision was clearly served on the Presenting Officers' Unit in Cardiff on 2nd May. There is no indication that service was not accepted there. On the contrary the email was in due course forwarded by internal mail to Angel Square. If the Secretary of State was relying on an agreement or rule 56 the document should have been promptly returned to the Tribunal for proper service. As it is, by accepting service as Mr Gilbert pointed out under rule 55, time starting running immediately.

20. The second problem is that it is not demonstrated by appropriate evidence that the agreement as claimed was in effect at the relevant time. The email evidencing the claimed agreement postdates the relevant period. If it was necessary to "clarify" where documents were to be sent that does not indicate that the preceding arrangements were clear. There is no witness statement (as there should have been) confirming the matters asserted in the grounds of appeal in relation to the first delay or the second delay.

21. On the limited material before us we find that at best there was an understanding between the Home Office and the Tribunal as to where documents were to be sent. We are unable to accept that this understanding was sufficiently formalised to fall within rule 56. We do not need in the circumstances to decide whether rule 56 would cover the arrangements. The language of rule 56 is perhaps not apt to cover service of decisions to different addresses depending on the outcome, in effect requiring the Tribunal to act as an external filing clerk. Further the email refers to "our agreement" about where documents are to be sent. There is no need for an agreement under rule 56. All that is required is a notification. A further feature is that by the time the email was sent the rules had changed. The 2005 rules had been replaced by The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (SI 2014/2604) with effect from 20 October 2014. We were not addressed on the application of the current rules to any agreement.

22. It does appear to us that there is no good reason to extend time in this case for the reasons given by the panel chaired by the Vice President and in the light of our comments above, quite apart from the subsequent procedural irregularity (delay in applying for permission to appeal to the Upper Tribunal). Mr Duffy said that the current arrangement worked well and saved resources and that the present case was a slip. He referred to the sensitivities of deportation appeals in particular. It would not appear to be unreasonable in those circumstances for staff to check decisions in deportation appeals (clearly identified by the letters "DA") and to take prompt action to fax or email the small number of cases which have slipped through the net to Angel Square. The very importance and sensitivity of deportation appeals requires more expeditious handling than was seen in this case even allowing for a slip on the part of the Tribunal.

23. The First-tier Tribunal did not admit the application. Under rule 21(7)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) we "must only

admit the application if the Upper Tribunal considers that it is in the interests of justice for it to do so." For the reasons given above we do not so find.

24. The application is not admitted.

Anonymity

The First-tier Tribunal in its decision of 1st May 2014 made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. We were not invited to rescind or vary that order. We continue it (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed

Upper Tribunal Judge Warr
22 May 2015