



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

Appeal Number: AA/10839/2014

THE IMMIGRATION ACTS

**Heard at Manchester IAC
On 31st March 2016**

**Determination Promulgated
On 8th April 2016**

Before

UPPER TRIBUNAL JUDGE COKER

Between

**GILBERT TOH ANGWA
(no anonymity order made)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Schwenk, counsel, instructed by Broudie Jackson & Canter
For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was granted permission to appeal on the grounds it was arguable that the appellant did not receive the notice of hearing.
2. The First-tier Tribunal judge recorded that the appellant, who was not legally represented, did not attend the CMR or the final hearing. The Notice of Hearing was sent to an address with a different postcode to that given on the appeal form. The appellant was required by the respondent to live at the address on his appeal form and was signing on every day. The refusal decision had the correct

address. Although he states he was given the First-tier Tribunal decision by the SERCO staff he states he was not given the Notice of hearing.

3. The respondent in her Rule 24 response casts doubt upon his asserted non receipt. The fact remains however that the post code was incorrectly recorded on the Notice of Hearing. As such it is simply not possible to conclude that he was properly served.
4. The respondent further asserts in her Rule 24 response that in any event the appellant cannot overcome the findings made by the First-tier Tribunal. With respect to the respondent, unless and until the appellant gave his evidence, such a conclusion cannot be drawn with such certainty.
5. Mr Harrison very sensibly did not pursue either of these lines of argument.
6. The appellant has been denied a hearing and as such there has been a material error of law such that I set aside the decision in its entirety for it to be re-heard by the First-tier Tribunal.
7. When we have set aside a decision of the first tier tribunal, s.12(2) of the TCEA 2007 requires us to remit the case to the First tier with directions or remake it for ourselves. Where the error of law is such as in this case and the facts are disputed or unclear I conclude that the decision should be remitted to a First-tier judge to determine the appeal.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit the appeal to be heard afresh by a First-tier Tribunal judge (not judge Gladstone), no findings of fact preserved.



Date 31st March 2016

Upper Tribunal Judge Coker