



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/50989/2013**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 1<sup>st</sup> February 2016**

**Decision & Reasons  
Promulgated**

**On 30<sup>th</sup> March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

**Between**

**MR A K M WASHI UDDIN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Hossain (Legal Representative)

For the Respondent: Mr L Tarlow (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. The appellant is a citizen of Bangladesh. His appeal against decisions to refuse to vary his leave and to remove him from the United Kingdom was dismissed by First-tier Tribunal Judge Woolf (“the judge”) in a decision promulgated on 31<sup>st</sup> January 2014.
2. The decision was made on the basis of the documentary evidence before the judge. She noted that the appellant had elected to have his appeal determined by way of a hearing. His notice of appeal contained no grounds of appeal. The Tribunal made a direction on 6<sup>th</sup> January 2014, requiring him to provide proper grounds by 13<sup>th</sup> January 2014.
3. The judge took into account the decisions giving rise to the appeal, the Secretary of State’s reasons and the notice of appeal. She found that the appeal could properly be decided without an oral hearing, in accordance

with rule 15(2)(c) of the 2005 Procedure Rules (then in force). She observed that the notice of appeal contained an indication from the appellant that he needed more time to prepare his grounds and to seek advice before submitting them. She found that he had been given an ample opportunity to prepare his case and provide written grounds. His notice of appeal was dated 9<sup>th</sup> December 2013. Having assessed the material before her, the judge concluded that the appellant had not discharged the burden of proof upon him and had not shown that the adverse decisions were unlawful. She dismissed the appeal.

4. In lengthy grounds in support of an application for permission to appeal, it was contended that the appellant did not receive the Tribunal's direction, dated 6<sup>th</sup> January 2014, and so he was unable to comply with it. His application for discretionary leave was made on the basis that he acted as a carer for his niece, who had since passed away. The appellant suggested that as he had paid fees for an oral hearing, he should have been given an opportunity to argue his case that he had established significant ties here since his arrival over eight years ago.
5. Permission to appeal was refused by a First-tier Tribunal Judge. The application was renewed and the appellant drew attention to the demise of his niece, apparently in January 2014, "during the time of appeal procedure", which had the consequence that he had not received "a fair trial". Permission was then granted by an Upper Tribunal Judge on the basis that it was arguable that the First-tier Tribunal Judge's decision was procedurally unfair.
6. On 8<sup>th</sup> January 2016, some three weeks before the hearing at Field House, there was a further direction. The parties were put on notice that the Tribunal did not have any of the documentary evidence before the First-tier Tribunal Judge. The parties were required to file and serve any documentary evidence upon which reliance was placed, even if that material had been served on an earlier occasion.
7. The case management file included a short bundle, sent to the Upper Tribunal on 10<sup>th</sup> November 2015. This consisted of a skeleton argument, which amounted to a rehearsal of the grounds in support of the application for permission to appeal, further copies of the Secretary of State's decision letter and of the First-tier Tribunal Judge's decision, a sponsorship declaration made by the appellant's brother which was undated and unsigned and finally a copy of a death certificate. This gave the correct date of the appellant's niece's demise as 31<sup>st</sup> December 2013, the date of registration of death being 2<sup>nd</sup> January 2014.
8. The Secretary of State provided a rule 24 response in which the appeal was opposed on the basis that the judge directed herself appropriately and made sustainable findings open to her on the evidence. She was satisfied that the appellant was given notice of his failure to comply with rule 8 of the 2005 Procedure Rules, which required proper grounds. It was open to the judge to find that the appellant had been given ample time to prepare

his case. There was no supporting evidence regarding his claim that the direction sent to him in early January 2014 was not received.

### **Submissions on Error of Law**

9. Mr Tarlow confirmed that the Secretary of State had received the short bundle from the appellant's solicitors, served in November 2015. Mr Hossain said that procedural unfairness had resulted from the judge's dismissal of the appeal. The appellant did not receive the direction sent by the Tribunal on 6<sup>th</sup> January 2014 and he had not received an oral hearing. He applied for leave to care for his niece, having had leave to remain as a student between February and July 2013, but his niece sadly passed away at the end of December 2013. The appellant had not responded to the Tribunal's direction because he had not seen it.
10. Mr Tarlow replied that the bundle prepared by the appellant's solicitors contained nothing amounting to proper grounds of appeal, although there was a skeleton argument. The judge was entitled to note the absence of any grounds. The responsibility lay with the appellant to provide grounds, whether or not the Tribunal sent out directions in early January 2014. The judge made no error of law in acting as she did.
11. Mr Hossain said that the appellant was unable to provide grounds of appeal. He was waiting for a reference number from the Tribunal but the demise of his niece and the absence of any further communication until dismissal of the appeal meant that he was unable to act in time. His passport was held by the respondent. The appellant had paid the fees required for a hearing but his appeal was decided without one.

### **Conclusion on Error of Law**

12. It is of considerable concern that the appellant has still not provided properly pleaded grounds of appeal. There were no such grounds before the First-tier Tribunal Judge in early January 2014 and none have appeared since although the bundle of documents provided by his solicitors in November 2015 included a skeleton argument. There is some engagement in that document with the Secretary of State's adverse decisions, at paragraph 11, and an Article 8 case appears to be advanced in the paragraphs which follow. It is asserted that the appellant has substantial private life ties here, and that he can meet the requirements of paragraph 276ADE(vi) of the rules. It appears that he also relies on Article 8, outside the rules. Paragraph 22 of the skeleton argument is headed "Statement of Additional Grounds" and this contains a case that the appellant has "already passed his ten years' lawful residency to qualify for the (sic) indefinite leave to remain".
13. The critical question is fairness and important recent guidance was given in Nwaigwe [2014] UKUT 418 (IAC), a decision from the President which builds on the Court of Appeal's judgment in SH (Afghanistan) [2011] EWCA Civ 1284. The decision of the judge in the present appeal is cogently reasoned. In the light of the limited evidence available and the absence of

proper grounds, her decision to proceed without a hearing and to decide the appeal was entirely reasonable.

14. However, the judge was unaware of the appellant's claim, maintained ever since, that he did not receive the direction from the Tribunal sent on 6<sup>th</sup> January 2014, requiring him to provide grounds of appeal within a week. She was also unaware of the demise of his niece, for whom he provided care, on 31<sup>st</sup> December 2013, some two weeks after the notice of appeal was sent to the Tribunal and a few days before the direction was made. At the time, the appellant was acting without professional advice and, in his notice of appeal, he made it clear that he wished to seek advice and required more time to provide his grounds.
15. The chronology shows that at the time the appellant fell into breach of the direction, he was still acting in person, had in effect applied for an extension of time and was no doubt in a period of grieving. The judge's pragmatic decision to decide the appeal on the papers followed soon afterwards, at the end of January 2014. Less than two weeks later, the appellant instructed solicitors and made his application for permission to appeal on 11<sup>th</sup> February 2014. The Tribunal's case management file shows that the copy death certificate, sponsorship declaration from the appellant's brother and other items accompanied the application. In other words, the appellant acted with a degree of expedition following service of the judge's decision. Notwithstanding the failure to provide properly pleaded grounds of appeal, the appellant and his solicitors have at least articulated a case which has not yet been considered substantively, as his appeal was not listed for hearing.
16. Overall, I find that there has been procedural unfairness, through no fault whatsoever on the part of the judge, and that her decision should be set aside. The procedural unfairness arose because the appellant did not receive notice of the hearing he was expecting and his failure to comply with directions must be weighed in the context of his informal application for more time to prepare his grounds, the absence of professional advice at the time and the particular family circumstances, all of them coming into play in the short period of weeks between the end of November 2013 and the end of January 2014.
17. The decision of the First-tier Tribunal will be set aside and remade, at Taylor House, before a judge other than First-tier Tribunal Judge Woolf.

### **NOTICE OF DECISION**

The decision of the First-tier Tribunal is set aside. It will be remade in the First-tier Tribunal, at Taylor House, before a judge other than First-tier Tribunal Judge Woolf.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell

**ANONYMITY**

There has been no application for anonymity and I make no direction on this occasion.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell