



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

**Appeal Number: UI-2022-000355
On appeal from: PA/50935/2021
(IA/01912/2021)**

THE IMMIGRATION ACTS

**Heard at George House,
Edinburgh
On the 12 October 2022**

**Decision & Reasons Promulgated
On the 09 November 2022**

Before

UT JUDGE MACLEMAN

Between

S A M

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Ndubuisi, of Drummond Miller, Solicitors

For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This case came before FtT Judge Farrelly at Glasgow on 1 October 2021. The appellant was then represented by English solicitors. In his decision dated 2 November 2021 the Judge recorded at [15] that the appellant indicated that his representatives “had been unable to attend” and that the respondent’s Presenting Officer was not “pressing for the appeal to proceed”.

2. The Judge noted at [16] the difficulties reported to the FtT by solicitors over arranging counsel, and that having been told on 28 September that counsel would not be attending, they advised that the appellant would be attending to seek an adjournment.
3. At [17 - 18] the Judge records that he asked the appellant for his views, and he consulted with his wife and “indicated he would be content to proceed. It was obvious ... he had an excellent command of English and was clear on the issues ... All the preparatory work had been completed ... I saw no injustice in proceeding”.
4. The appeal was dismissed, partly because of adverse credibility findings on evidence from the appellant and his wife.
5. The appellant, through his original solicitors, sought permission to appeal to the UT, the first point raised being that the Judge should not have permitted the hearing to go ahead in absence of representation.
6. On 17 January 2022 FtT Judge Boyes refused permission, on the view that having recorded the appellant’s wish to proceed at [17], it could not be an error to do so.
7. The application was renewed to the UT, again through the same solicitors, on grounds formulated differently, but raising the same principal point. The grounds observe that English solicitors could not have made the application in person, having no right of audience, and submit that it was unfair to ask the appellant for his views.
8. On 13 June 2022 UT Judge Blum granted permission:

There is no indication ... that the appellant discussed the possibility of proceeding with the appeal with his legal representatives, or that he was advised to do so, and the renewed grounds of appeal indicate that the appellant did not seek the advice of his solicitors before agreeing to proceed ... It also appears that the judge was wrong to say that the appellant was “formerly represented” by his solicitors. They remained his representatives at all times ... it is arguable that the decision discloses a procedural impropriety that may ... render the decision unsafe.
9. The decision in its heading says that the appellant was “formerly represented by Reiss Solicitors Ltd”, which is incorrect.
10. Mr Mullen accepted that he could not get past the point that in all the above circumstances the appellant had been denied the services of a skilled representative at the hearing, and that he could not maintain that justice had been seen to have been done.
11. That concession was fairly and correctly made. The position at the outset before the Judge was that the appellant, having taken advice, wished to be represented at an adjourned hearing, and his advisers remained in place. There was nothing to indicate that they had not done all that might

reasonably be expected to have counsel in attendance. It was not for the tribunal to put the appellant to further decision on the matter.

12. It would probably have been appropriate to go ahead if the appellant had indicated spontaneously that he wished to dispense with any representation; but that was not this case.
13. The position in which the appellant was put leaves the unfortunate impression that the tribunal took the view that representation could make no difference.
14. There has been apparent procedural unfairness, such that the decision cannot safely stand.
15. Under section 12 of the 2007 Act, and under Practice Statement 7.2, the decision of the FtT is set aside. It stands only as a record of what was said. The case is remitted to the FtT for a fresh hearing, not before Judge Farrelly.
16. The FtT made an anonymity direction. There no apparent need to depart from the principle of open justice, but as the matter was not addressed in the UT, anonymity is maintained herein.

H Macleman

14 October 2022
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.