



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000056

First-tier Tribunal No: HU/06313/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 17 June 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

PRADEEP PANAYIL SREEDHARAM
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms H Gilmour, Senior Home Office Presenting Officer

Heard at Field House on 30 May 2023

DECISION AND REASONS

Introduction

1. The appellant appeals against the decision of First-tier Tribunal Judge S Taylor, promulgated on 2 June 2021, in which his appeal against the respondent's decision to refuse his human rights application was dismissed.
2. Permission to appeal was granted by Upper Tribunal Judge Lindsley on 16 November 2021.

Anonymity

3. No anonymity direction was made previously, and there is no reason for one now.

Factual Background

4. The appellant is a national of India now aged 46 who entered the United Kingdom with leave to enter as a student, with leave granted from 24 October 2008 until 31 January 2010. He unsuccessfully applied for further leave to remain and his appeal against that decision failed, with his appeal rights becoming exhausted on 9 October 2010. Thereafter the appellant remained in the United Kingdom without leave. He came to light on 26 September 2019, when he was encountered by the police and served with a removal notice. The appellant raised grounds as to why he should be permitted to remain in the United Kingdom on 1 October 2019.
5. The basis of the appellant's human rights claim, which was drafted by a firm of solicitors, was that an agency had made him do difficult work tasks in the United Kingdom in unsafe conditions and for very little pay. The appellant stated that he feared that the agency, who had deep roots in India, would harm him or his family if he were to stop working for them. He claimed to be a victim of modern-day slavery, to believe that he was lawfully present in the United Kingdom under Tier 2 of the points-based system and to rely on the private life he had developed in this country.
6. The appellant's human rights claim was refused by way of a decision dated 2 July 2020. Firstly, it was noted that the appellant was not relying on a relationship with a partner or child. Secondly, the respondent stated that the appellant could not meet the requirements of the Immigration Rules in respect of his private life. Thirdly, the respondent did not accept that there were circumstances which could justify an exceptional grant of leave. Lastly, the appellant's claim to be a victim of slavery was considered under the heading of compassionate factors. The respondent noted that the appellant had been offered assistance as a potential victim of trafficking on two occasions and had not taken up these offers. Nor had he taken up an invitation to make a claim for asylum nor contacted the police regarding his claims of forced labour. This was said to cast doubt on the credibility of the appellant's claimed fear of return.
7. In appealing to the First-tier Tribunal, the appellant made three points. Firstly, that the respondent had not applied her policy guidelines when considering his private life. Secondly, that the appellant had not pursued an asylum claim owing to the pandemic and thirdly that he required time to pursue his asylum claim and requested a grant of discretionary leave in the meantime based on his private life.

The decision of the First-tier Tribunal

8. The appellant did not attend the hearing before the First-tier Tribunal. The judge noted that the notice of hearing had been posted to the appellant and had not been returned, that an email sent to the appellant had bounced back, that there was no correspondence from the appellant and that there was no telephone number for him. The judge proceeded with the hearing, hearing submissions on behalf of the respondent and dismissing the appeal for largely the same reasons as those given by the Secretary of State.

The grounds of appeal

9. The appellant's application for permission to appeal was received by the Upper Tribunal on 19 August 2021, the First-tier Tribunal refusal of permission being sent

on 28 July 2021. The application deadline was therefore 11 August 2021. The appellant stated that he received the Tribunal's communication on 12 August 2021.

10. The grounds of appeal state, in essence, that the appellant did not receive the notice of hearing either by post or email and that the proceedings were unfair.
11. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

I am satisfied that the appellant was sent notice of hearing to his address by the First-tier Tribunal, however it is possible that the notice was lost in the post, and it is clear that it was not possible for the appellant to be notified of the hearing by telephone or email. In such circumstances it is arguable that proceeding with the appeal was in all of the circumstances procedurally unfair. Although the lack of receipt of notice of hearing could not have been known to the First-tier Tribunal Judge this is not relevant as the question is not whether it was reasonable for that judge to have proceeded with the hearing on the material known at that time but whether it was ultimately fair to have done so in all of the circumstances.

12. The judge granting permission did not address the timeliness point.
13. The respondent filed a Rule 24 response dated 7 February 2023. In it, the appeal was opposed, with the respondent noting that the judge was aware that the notice of hearing was served at an address specified by the appellant, that the appellant had given little by way of evidence to indicate that they had experienced issues with other correspondence and that it was his responsibility to ensure that his email details were correct.
14. On 17 May 2023, a letter was received in the post from the appellant in which he had received the hearing notice dated 3 May 2023 informing him of the error of law hearing which had been listed for 30 May 2023. He stated that he would not be attending the hearing because he was unable to obtain a legal representative. The appellant requested that his appeal be considered in his absence and remitted to the First-tier Tribunal. He confirmed that his case was that he did not have the opportunity to submit his case to the First-tier Tribunal as he had not received the notice of hearing.

The error of law hearing

15. As expected, the appellant did not attend the hearing. I heard briefly from Ms Gilmour who relied on the Rule 24 response as well as noting that the application for permission to appeal to the Upper Tribunal was made out of time. At the end of the hearing, I announced that the decision of the First-tier Tribunal contained no material error of law, and that the decision was upheld.

Decision on timeliness

16. The application for permission to appeal is out of time. I apply the three-stage test from *Hysaj v SSHD* [2014] EWCA Civ 1633.
 - a. What was the seriousness and significance of the breach?
 - b. Why was the application late?
 - c. In all the circumstances should time be extended following Rule 5(3)(a) applying the overriding objective of Rule 2 to deal with cases fairly and justly?

17. A delay of nearly 8 days is serious and significant, against the background of a period of 14 days for appealing. I have had regard to the explanation provided in the grounds, namely that the appellant did not receive the refusal of permission until 12 August 2022. That claim is unsupported by any detail or evidence. While the appellant refers to an envelope, there is no indication on that item to support the claim that the notice of decision was posted any later than 28 July 2021. Furthermore, even if the appellant received the correspondence on 12 August 2022, this does not explain why it was not until 18 August that he completed the form and provided his straightforward and brief grounds of appeal. Considering all the circumstances including the strength of the grounds, I am not satisfied that the applicant has provided a good reason for extending time and I decline to do so.
18. If I am wrong on the time issue, I nonetheless find that the decision of the First-tier Tribunal contained no material error of law for the reasons set out below.

Decision on error of law

19. I have had regard to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 regarding the power of the First-tier Tribunal to adjourn or postpone a hearing under its case management powers. Regard should have been had to the overriding objective set out in Rule 2 requiring the Tribunal to deal with cases fairly and justly. I have also considered the decision in *Nwaigwe* (Adjournment: Fairness) [2014] UKUT 00418 (IAC). The crucial question being whether the refusal of an adjournment deprived the affected party of a right to a fair hearing and not whether it was reasonable of the judge to have proceeded with the hearing.
20. The First-tier Tribunal judge took great care to establish whether the appellant was served with the notice of hearing. He rightly checked to see if the notice of hearing had been returned by Royal Mail as undelivered. It was not. The judge was also aware that the email address provided by the appellant was incorrect, in that emails to him had bounced back and that there was no telephone number provided. The judge was scrupulously fair in his approach to proceeding with the appeal in the absence of the appellant. At this point, I note that the appellant's email address on the handwritten notice of appeal IAFT-5 includes the number 7701 and differs by one number to that provided in his recent correspondence to the Upper Tribunal, which is 7001. The appellant provided both those email addresses. In addition, the appellant's postal address is unchanged from the time his human rights claim was made in 2019 and he has provided no indication that he had any difficulties in receiving his post. He has also declined to provide a telephone number.
21. The appellant has made something of a habit of failing to communicate with the immigration authorities in the United Kingdom since his appeal rights were exhausted in 2010. At that stage, the appellant chose to go to ground and only came to light 9 years later when he was encountered by chance by the police. His human rights claims were only made in response to a removal notice. His claim to have been subjected to forced labour was unsupported by any detail or evidence and he declined the respondent's assistance with seeking asylum or support as a victim of trafficking. While the appellant appealed, he did not attend his hearing, claiming never to have received the notice of hearing. Lastly, the appellant has

declined to attend the hearing of his appeal before the Upper Tribunal and continues to refrain from providing any further information or evidence to support his claims.

22. Considering all matters, including the appellant's reluctance to attend his hearing before the Upper Tribunal to speak to his claim that he did not receive the notice of hearing, I conclude that I simply do not accept that he did not receive the notice of hearing. Even putting that to one side, even had the appellant attended his hearing before the First-tier Tribunal, he relies on no evidence to support his claims of forced labour or fears of persecution. The claims were made by his previous solicitors in outline and the appellant has never provided a letter or witness statement to support those claims. Even now there is no evidence that the appellant has applied for asylum despite being invited to do so by the respondent since 2020. I conclude that the appeal against the decision of the First-tier Tribunal is little more than a further delaying tactic. Therefore, even had the judge erred in proceeding, any error is immaterial.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal is upheld.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 May 2023

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.