



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2021-001966**  
**First-tier Tribunal No:**  
**PA/04469/2020**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 01 November 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**FS**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Schwenk instructed by MRG Solicitors.  
For the Respondent: Mr Tan, a Senior Home Office Presenting Officer.

**Heard at Manchester Civil Justice Centre on 31 October 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The appellant appeals with permission a decision First-tier Tribunal Judge Holt ('the Judge'), promulgated on 21 April 2021, in which the Judge dismissed the appellant's appeal against the refusal of his application for international protection and/or leave to remain in the United Kingdom on any other basis.
2. The appellant is a citizen of Pakistan born on 17 December 1986.
3. At [13] of the decision under challenge Judge set out the issues to be determined which are stated as being "(i) whether the appellant's account is

credible and (ii) whether the appellant is gay or has been threatened or is at risk from family members”.

4. The Judge notes in the determination that the appellant failed to attend, which was considered particularly important because it meant he did not explain inconsistencies in the evidence that had been highlighted in a prehearing review as being central to the case.
5. The Judge was not satisfied with any element of the appellant’s claim, noting that he only claimed asylum when he had been arrested by immigration officers having lived in the UK for many years as an overstay, and that the claimed sexual orientation is a sham [28].
6. The Judge dismissed the appeal on asylum, humanitarian protection and human rights grounds in line with the core findings.
7. The appellant sought permission to appeal claiming he asked the Tribunal on 6 April 2021 to adjourn the hearing on 7 April having explained his circumstances. The appellant acknowledges having received an email from the Tribunal saying the hearing had not been adjourned but claims that went to his junk folder that he only checked around 1 PM. He then decided to attend court and asked a friend to order a taxi which was ordered straightaway. The appellant claims he received a telephone call which results he thought was from the Home Office. He explained he lived in the Levenshulme area of Manchester and that he was coming to court to explain his circumstances. The appellant claims the lady on the phone told him it would take at least one hour and asked him not to come to court, but as his taxi was already booked he went to court shortly after the call. The appellant claims he reported his presence to the staff, was asked to wait, but was later told the hearing had been completed and that he would receive documents by post. The appellant claims to have waited a short period of time after which he left the tribunal.
8. Permission to appeal was granted by another judge the First-tier Tribunal on 24 May 2021, the operative part of the grant being in the following terms:
  1. Permission is sought to appeal, in time, the decision of First Tier Tribunal Judge Holt, dated 7th April 2021, dismissing an asylum and human rights appeal.
  2. The appellant is unrepresented and explained that he had some difficulty obtaining documents and, also, that emails from the Tribunal had gone to “spam”. The Judge had proceeded with his appeal hearing despite the appellant having informed the Tribunal that he was on the way to the hearing centre and that he was in a taxi. The Judge had made an error.
  3. The history of the appeal is set out from paragraph 4 onwards. Whilst it is clear that the appellant has not responded to emails in December 2020 or directions issued in March 2021, it is arguable that the Judge erred in proceeding to hear the appeal which was listed at 1 p.m. despite being made aware that the appellant was travelling to the hearing centre in a taxi (paragraph 5 refers). It is arguable that the Judge fell into procedural error by not waiting for the appellant’s arrival. Even if, which is likely, the Judge had not been minded to adjourn the appeal, the presence of the appellant at his hearing would have permitted him to give oral evidence to the Tribunal in support of his protection appeal. It is arguable that the Judge fell into error by proceeding in the absence of the appellant rather than waiting for his arrival. Permission is granted on this ground solely.

### Discussion and analysis

9. It is important to take into account the whole history of this matter. It is clear there have been communication problems in relation to the appellant and a failure by the appellant to respond to directions. It is, however, apparent that the appellant did eventually request a copy of the Secretary of State’s bundle, having not received the same, and that there was delay in this being sent to him, caused

in part by a public holiday. The appellant received the bundle the day before the appeal hearing.

10. It is also clear that there was a conversation between the appellant and the tribunal on the day of the hearing. He states he was contacted by a member of staff who he told he would be travelling to the hearing centre. The appellant lives in a suburb of Manchester meaning that although there was a slight delay it would not have been for a substantial period of time, especially as he booked a taxi to bring him into the city centre.
11. The determination indicates the hearing was due to start at 1 o'clock. It does not appear unreasonable for the tribunal to have waited a reasonable period of time for the appellant to attend after he stated that was his specific intention. The tribunal will have been listed to sit until 4 PM with no evidence of anything in the list that would have caused problems to the tribunal even if it started later that afternoon. Presumably as a protection appeal which would have been given a three-hour listing this was the only matter in the Judge's list on the afternoon in question.
12. The appellant attended and was told the matter had been heard and that he would receive a written decision in due course, which he did. It is unfortunate the Judge makes no reference to this in the decision or provide adequate explanation for why, as he attended as he indicated he would on the telephone, the Judge did not wait or reconvene the hearing.
13. It is important that justice is seen to be done as well as being done in an appeal. Even though the appellant's conduct in relation to the appeal, prior to instructing his current representatives, can be criticised, it is clear on the day he told a member of the tribunal staff that he wanted to attend, made the arrangements to do so, and did attendance at the centre. I find there is insufficient explanation in the decision or in the chronology to show that the interests of justice in allowing the appellant to have attended and to have put his case to the Judge were outweighed in this appeal.
14. There is a material difference between a judge being faced with an appellant who has not attended when there is no application for an adjournment, no explanation for their lack of attendance, and no indication that they intended to attend, even if later, and a situation such as this where the appellant specifically confirmed to a member of the tribunal staff that he was going to attend and in fact did so at the hearing centre, albeit late.
15. I find there has been a procedurally irregularity sufficient to amount to a material error of law in this appeal.
16. I set the decision of the Judge aside. As the issue is that of fairness, in accordance with the guidance provided by the Court of Appeal, there can be no preserved findings.
17. I remit the appeal to the First-tier Tribunal sitting at Manchester to be heard afresh by a judge other than Judge Holt. Having considered the guidance provided by the Upper Tribunal in relation to remittance of appeals in the Presidential guidance and recent determination of Begum, I consider the unfairness has infected all aspects of the appeal. The appellant has been denied the opportunity to have his case considered before the First-tier Tribunal fairly. Extensive fact-finding is required on every aspect of the appeal in dispute. On balance it is appropriate for the appeal to be remitted.

### **Notice of Decision**

22. The First-tier Tribunal has materially erred in law. I set the decision of the Judge aside. I remit the appeal to the First-tier Tribunal sitting at Manchester to be heard *de novo* by a judge other than Judge Holt.

**Case No: UI-2021-001966**  
**First-tier Tribunal No: PA/04469/2020**  
**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
**31 October 2023**