



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Extempore Decision

Case Nos: UI-2023-005078
UI-2023-005079

First-tier Tribunal Nos: EA/14412/2021
EA/53532/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

8th March 2024

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

Mohamed Abdiaziz Farah
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Sellwood, Counsel

For the Respondent: Mr Melvin, Senior Home Office Presenting Officer

Heard at Field House on 19 February 2024

DECISION AND REASONS

1. The appellant is appealing against the decision of Judge of the First-tier Tribunal Sweet promulgated on 1 September 2023.
2. The judge dismissed the appeal following a hearing at Hatton Cross that neither the appellant nor a representative on his behalf attended.
3. The judge decided to proceed in the appellant's absence because he was satisfied that the appellant had been notified, and was aware, of the hearing.
4. There are several grounds of appeal challenging the decision but I need only consider Ground 1, which concerns the decision by the judge to proceed in the appellant's absence. It is argued that it was unfair and unlawful to proceed without addressing whether it was in the interests of justice to do so, as required

by Rule 28 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

5. Mr Melvin's response to ground 1 was that the judge made clear findings about the appellant being on notice of the hearing and knowing when the hearing would occur.
6. Rule 28 of The Tribunal Procedure Rules states:

"If a party fails to attend the hearing the Tribunal may proceed with the hearing if the Tribunal:

 - (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
 - (b) considers that it is in the interests of justice to proceed with the hearing."
7. There are two distinct elements to Rule 28, both of which must be satisfied. This is clear from the use of the word and between subparagraphs (a) and (b).
8. The judge addressed subparagraph (a) as he considered whether the appellant had been notified of the hearing and whether reasonable steps had been taken to notify him of the hearing. However, the judge did not proceed, as required by subparagraph (b), to consider whether, despite the appellant being notified (and aware) of the hearing, it was in the interests of justice to proceed. The failure to consider subparagraph (b) was legally erroneous and as a consequence the decision cannot stand.
9. This is a case where the appellant has not had an opportunity to put his case and therefore, in accordance with para. 7.2(a) Practice Statements of the Immigration and Asylum Chambers of the FtT and the UT, it is appropriate for this case to be remitted to the First-tier Tribunal to be made afresh.

Notice of decision

10. The decision of the First-tier Tribunal involved the making of an error of law and is set aside. The appeal is remitted to the First-tier Tribunal to be made afresh by a different judge.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29.2.2024