



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000766
First-tier Tribunal No:
HU/01310/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 20 August 2024

Before

UPPER TRIBUNAL JUDGE BRUCE
UPPER TRIBUNAL JUDGE LANDES

Between

SAZAN AHMATI
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bobb (Solicitor, Aylish Alexander Solicitors)
For the Respondent: Mr Terrell (Senior Home Office Presenting Officer)

Heard at Field House on 7 August 2024

DECISION AND REASONS

1. The appellant claims to be a national of Kosovo with an Albanian father. The respondent says he is a national of Albania. On 18 August 2022, the respondent refused his human rights' claim and made a deportation order against him. The appellant appealed the decision to refuse his human rights' claim and the appeal came before Judge Bartlett on 11 September 2023. The appellant did not attend that hearing.
2. Judge Bartlett was satisfied both that the appellant had had notice of the hearing and that it was not in the interests of justice to adjourn the hearing. She continued to consider the material before her (only the respondent's bundle, as the appellant had not filed any evidence) and on that material, dismissed the appellant's appeal by decision promulgated on 20 September 2023.
3. The appellant says he became aware of the dismissal of his appeal when he was detained on 24 January 2024. He consulted his current solicitors and they obtained a copy of the decision on 30 January 2024 and then he applied for

permission to appeal. On 30 April 2024, Upper Tribunal Judge Pickup granted permission to appeal saying *“On balance I am just persuaded that there may be an arguable error of law, through no fault of the First-Tier Tribunal, in proceeding in the appellant’s absence. That may undermine the other findings which resulted in the dismissal of the appeal... the appellant is on notice to provide the evidence to demonstrate that he took all proper steps to notify the Tribunal of his correspondence address and to support his claim that he was not notified of the hearing date.”*

4. Before us, and in response to Upper Tribunal Judge Pickup’s comments when granting permission, the appellant sought to adduce his witness statement of 16 May 2024, served under cover of an application notice under Rule 15 (2A) Tribunal Procedure (Upper Tribunal) Rules 2008, also correspondence from his former solicitors dated 21 May 2024 with a further application notice under Rule 15 (2A) not served until 2 August 2024. Mr Bobb also asked to call the appellant to give evidence to respond to the correspondence from his former solicitors.
5. We considered that it was necessary in the interests of justice to admit the appellant’s witness statement and the correspondence from his former solicitors, so that we could decide whether or not there was a procedural irregularity. Whilst it was not usual to call the appellant to give evidence, certainly without a witness statement, we considered, again in the interests of justice, that we should hear from the appellant bearing in mind that his former solicitors contended that he had notice of the hearing. The appellant gave evidence and was cross-examined by Mr Terrell. Mr Terrell had indicated that he might need time to respond to the evidence, but in the event he was content to proceed to cross-examine immediately.
6. Having heard submissions from both representatives, we indicated we would reserve our decision.

The relevant test

7. Rule 28 The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 provides
*“If a party fails to attend a 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.”*
8. Mr Bobb does not criticise Judge Bartlett on the information available to her at the time and does not suggest that she did not properly apply rule 28 on the information she had. He has referred us to Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) and says the essential question is one of fairness to the appellant. Mr Terrell submits that it is more complex than that and the appellant would have to show the judge made a mistake of fact which caused unfairness to the appellant (referring to Carnwath LJ at [66] of E&R v Secretary of State for the Home Department [2004] EWCA Civ 49). We consider that the test is as Mr Bobb submits. Nwaigwe is quite clear. The headnote sets out that the test to be applied is that of fairness: was there any deprivation of the affected party’s right to a fair hearing? Nwaigwe refers to SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284 and quotes with approval [13] of that decision *“First, when considering whether the immigration judge ought to have*

granted an adjournment, the test was not irrationality. The test was not whether his decision was properly open to him or was Wednesbury unreasonable or perverse. The test and sole test was whether it was unfair."

9. When considering whether it was unfair to refuse to adjourn the hearing, it is self-evidently important to consider whether the appellant was notified of the hearing, or whether reasonable steps were taken to notify him of the hearing.

Notification of the hearing

10. Judge Bartlett found that the notice of hearing was sent to the appellant's former solicitors on 9 June 2023. They came off the record on 26 June 2023 and their letter coming off the record indicated they had a communication with the appellant about the hearing [2]. That was the reason she was satisfied that the appellant had notice of the hearing.
11. The appellant said in his witness statement that he only met his former solicitors twice, once in prison when they lodged the notice of appeal for him and once after he had been released, when he was frustrated because the solicitor did not answer his phone calls, was trying to charge him too much money and insisted that the appellant obtain a social worker's report which the appellant did not want and thought was unnecessary. At a date between early March and late May 2023 (the appellant says 2024 in his statement, but the year must be wrong) the appellant told the solicitor that he did not have the money. The solicitor said he needed payment in about 10 days and insisted on the social worker's report. The appellant said that it was clear to him that he could not continue with the firm, but he had not made any firm decision to instruct anyone else. He said he did not hear from the solicitor, but he did not think anything was wrong, as he assumed the solicitor was waiting for the money. Sometime around the end of May, the appellant moved from Hendon, his bail address, out of London, to his partner's home. He said he did not notify the solicitor because they were not on speaking terms. He did not notify the Tribunal of his change of address because he believed he still had a solicitor whose duty it was to keep him informed and they had mainly been in contact by telephone. He maintained at [15] that he was never notified by the solicitor of the hearing date; he had no idea the matter had progressed that far and he did not fail to comply with directions because he never received directions.
12. The appellant's former solicitors have supplied comments on the appellant's witness statement. They say that they obtained an extension of time to prepare the appeal because the appellant was in detention, and after he was released he attended their offices where they discussed money and supporting evidence regarding his appeal. The supporting documents were needed quickly because non-compliance directions dated 14 March 2023 had been received from the Tribunal. The appellant was advised of the need to instruct an independent social worker and advised to attend to provide supporting evidence and provide a witness statement, but he did not do so. They denied that the appellant expressed concerns regarding fees, was unable to pay, or that they were rude to him as the appellant suggested.
13. The former solicitors have produced an attendance note dated 22 June 2023, timed at 12:36 which states as follows:
- *Outgoing call to SA to discuss his appeal matter.*
 - *SA said that he did not have time to speak as he was working.*

- *I informed SA that we received notice of his appeal hearing taking place on 11/09/23*
- *I informed SA that we would not be able to represent him at the hearing as he has not provided the requested documents and put us in funds, therefore he has to represent himself.*
- *I said to SA that I would forward him notice of hearing and HO bundle.*

14. The former solicitors followed this phone call with an email sent at 13:12 the same day, the email attaching the Home Office bundle, the notice of hearing, and the tribunal's directions. They wrote

"Further to our telephone call, please find attached notice of your appeal hearing taking place on 11/09/2023 at 10am and the Home Office bundle.

We are unable to represent you at the hearing as you did not provide us with the requested documents to enable us to prepare for the hearing and did not put us in funds. Therefore, you have to represent yourself at the hearing.

We will notify the Tribunal that we no longer represent you and close your file. Should you have any queries, please contact our office."

15. The appellant accepted in cross-examination that his former solicitors most probably had called him, but he did not remember. He accepted that the email from them had been sent to his email address and said that he most probably received it, but he never saw it. When questioned as to whether he had checked his email he said he used to get so many emails coming through and he had most probably deleted it without seeing it. He clarified that he could not be certain he had received it.
16. We are satisfied that the appellant's former solicitors did telephone him as their apparently near contemporaneous attendance note suggests, and that they sent him an email shortly thereafter. In both cases, they notified him of the date of the hearing and they sent him relevant documentation with the email.
17. Mr Bobb submits that the attendance note reveals that the appellant said he did not have time to speak because he was working and that the solicitors should have clarified that the appellant understood what they were telling him and its importance, but it is difficult to see what more the solicitors could have done responsibly in that telephone call, when the appellant had told them that he was working and did not have time to speak. They followed their call by an email no doubt so that the appellant could see and reflect on the information later. We are satisfied that the appellant was properly informed of the hearing.

Fairness; the interests of justice

18. Judge Bartlett considered that it was not in the interests of justice to adjourn the case in the circumstances. She was satisfied that the appellant was aware of the hearing and had made a decision not to attend. She found he had not engaged in the appeal process because he had not provided any documentation.
19. Mr Bobb submits that the appellant did not comprehend that he had an appeal hearing. He submitted that if the appellant did not appreciate that he had an appeal hearing then he had not had the fair hearing to which he had a right. The appellant had said in his witness statement that if he had notice of an appeal he

would have attended because he wanted nothing more than to address the court of the reasons why his family should not be torn apart. He said in evidence that he appreciated that an appeal was likely to be dismissed if someone did not attend.

20. We accept that the appellant was continuing to report weekly to the Home Office and we accept that he attended his previous appeal.
21. However, the appellant demonstrated a distinct lack of engagement with this appeal even on his own case. He seems to have been disappointed with his former solicitors but did not do anything about this. On his own case he did not chase up what was happening with his appeal despite the fact it had been ongoing for at least a year, he did not seek to progress his appeal and he did not tell his former solicitors or the Tribunal about his change of address. He only took action when he was detained. We are satisfied from his former solicitors' evidence that he was advised to attend their offices and provide supporting evidence so they could draft a witness statement and comply with other evidential requirements, but he failed to do so. His actions are not the actions of a person who was concerned about the outcome of their appeal. We find that it is more likely than not that the appellant appreciated he had an appeal hearing coming up on 11 September and that his former solicitors were no longer representing him, but simply hoped that if he ignored the problem it would go away or something would turn up.
22. The appellant has a right to a fair hearing. The overriding objective of procedure rules is to enable the Tribunal to deal with cases fairly and justly. However the right to a fair hearing does not mean a party has a right to call for a hearing at any stage or whenever they decide they want to participate. Parties have a duty to help the Tribunal to further the overriding objective and to co-operate with the Tribunal generally. We are satisfied on the information we have, as opposed to the information the judge had, that the refusal of an adjournment was fair and that there was no deprivation of the appellant's right to a fair hearing. We are satisfied of this because we consider that the appellant knew perfectly well that he had an appeal hearing but chose not to participate in the process until he had little option because he was detained.
23. There is no error of law in the judge's decision.

Notice of Decision

The judge's decision of 20 September 2023 stands. The appellant's appeal remains dismissed.

A-R Landes

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 August 2024

