



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001425

First-tier Tribunal No: HU/58991/2023
LH/00994/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 9 September 2024**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**MH
(ANONYMITY ORDER MADE)**

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr R Ahmed instructed by M A Consultants.

For the Respondent: Mr McVeety, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 30 July 2024

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 of First-tier Tribunal Judge V Jones ('the Judge'), promulgated following a hearing on 15 February 2024 at Birmingham, in which the Judge dismissed his appeal against the Respondent's decision of 26 June 2023 refusing his application, made on 21 March 2023, for

leave to enter the United Kingdom as the adopted child of the sponsor in the United Kingdom.

2. The Judge records that there was no appearance for the Appellant when the matter was called on and so the case was put back to enable the representative/sponsor to appear. By 11:55 they had not done so and there had been no contact from the representatives to explain their absence. The Judge therefore found it was in accordance with the overriding objective to hear the case in the absence of any representative or witness for the appellant.
3. The Appellant sought permission to appeal to the Upper Tribunal which was refused by another judge of the First-tier Tribunal on 15 March 2024, and renewed to the Upper Tribunal.
4. The Appellant's representatives, as set out in a letter dated the 27 February 2024, stated they never receive notice of hearing and neither did anybody at the Hearing Centre contact them on the morning of 15 February 2024 to enquire as to why nobody had attended on the Appellant's behalf. It is stated neither the Appellant nor his representative received any correspondence directing them to explain why a bundle had not been filed either. The Grounds argue the Judge erred in law in not taking steps to adjourn the case as there is nothing in the determination to show the Judge asked the Respondent for her views, namely whether the appeal ought to be adjourned, to indicate the Judge directed court staff to make contact with the representatives to find out why there was no attendance as they are on record as the Appellant's legal representatives, no indication in the determination of any steps being taken by the Judge to be satisfied the Appellant was provided with the notice of hearing, and no consideration of whether it was in the interests of justice or fairness to adjourn the hearing of the court courts own motion.
5. Permission to appeal was granted by Deputy Upper Tribunal Judge Woodcraft on 8 May 2024, the operative part of which is in the following terms:

The appellant's representatives argue: (i) they did not receive a notice of hearing; (ii) the tribunal should have contacted them on the day to find out why they were not at court; (iii) the hearing should have been adjourned pending further investigation and (iv) the presenting officer should have been asked whether the respondent thought the matter should be adjourned.

Point (i) is undermined (as the FTT judge who refused permission indicated) because the representatives had received communications both before and after the hearing from the Tribunal. Indeed they had requested that the hearing should take place in Birmingham because that was where the sponsors had moved to. The representatives do not deal with such matters as their practice in uploading and downloading documents from the court file or what checks they had in place to monitor progress in this particular case. As to (iii) there was no application for an adjournment and it was not for the tribunal to second guess the parties and adjourn the case on a speculative basis (given that no supporting evidence had been filed on behalf of the appellant). As to (iv) the respondent did not suggest an adjournment and has not indicated his consent to setting aside the determination.

This leaves (ii) above. It is arguable that given this appeal concerned a child out of country (who would not be expected to attend in person even if in country) the tribunal could have made a telephone call to the representatives office to see where they were. It is therefore arguable that the appellant did not have a fair hearing because the tribunal proceeded in the absence of the appellant's representatives. I therefore give permission to appeal.

The appellant's representatives will be expected to file with the tribunal and serve on the respondent at least 14 days before the error of law hearing in the Upper Tribunal a witness statement from a partner in the representatives firm explaining:

- (1) how it was that they missed notification of this hearing when they received other notifications;
- (2) The firm's practice in monitoring communications from the Tribunal;
- (3) Whether they were in fact instructed to attend on 15 February 2024.

Failure to file and serve such a statement may lead the Upper Tribunal to conclude that there is no merit in this onward appeal.

6. On behalf of the Appellant Mr Ahmed stated that, as outlined in their letter of 16 July 2024, the representatives had undertaken a thorough search of their IT systems and had no trace of any notification of having received a notice of hearing, which is why they did not attend on the day.
7. Mr McVeety was able to check on his laptop and confirmed that the notice of hearing was on the portal, have been uploaded on 31 January 2024.
8. A skeleton argument uploaded to the portal by the Appellant's representatives is dated 26 October 2023, before the date the notice of hearing was sent out.
9. The representatives have been consistent in maintaining that the reason they did not attend the hearing was, despite the fact they received other notifications, they did not receive notification of the hearing. If they had done so, they would have attended.
10. This is not a firm in relation to which I am aware of concerns about their honesty or otherwise in relation to what they are claiming did not occur. They will be aware that if they deliberately mislead the Tribunal in relation to such matters, they are likely to be referred to the SRA and struck off.
11. It is known that there was a period during which there was some confusion in relation to notifications that were sent out concerning cases on the portal, and although I am unable to confirm that this is specifically one of those cases the chronology indicates that that may be a plausible explanation.
12. As the reason the representative and sponsor did not attend was because they had no notice of the hearing, I find there has been a procedural irregularity sufficient to amount to a material error of law, through no fault of Judge V Jones.
13. I therefore set the decision aside. There can be no preserved findings.
14. I remit the appeal to the First-tier Tribunal sitting at Bradford (venue confirmed with the sponsor who attended this hearing) to be heard afresh by a judge other than Judge V Jones.

Notice of Decision

15. The First-tier Tribunal has been shown, through no fault of the Judge, to have materially erred in law on the basis of a procedural unfairness. I set that decision aside.
16. The appeal shall be remitted to the First-tier Tribunal sitting at Bradford to be heard afresh by a judge other than Judge V Jones.
17. Case management directions shall be given by First-tier Tribunal at Bradford upon receipt of the case.
18. Steps may need to be taken to ensure that M&A Consultants receive the notice of hearing, perhaps by way of a confirmatory telephone call by the Tribunal staff a couple of days after the notice of hearing has been uploaded to the Portal.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 August 2024