



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

Case No: UI-2024-002205

FtT No: PA/01618/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 20 September 2024**

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

**AA (IRAQ)**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr F Aziz, Counsel, instructed by The UK Law Firm

For the Respondent: Mr N Wain, Senior Presenting Officer

**Heard at Field House on 10 September 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**

**Introduction**

1. The appellant appeals a decision of First-tier Tribunal Judge O R Williams (“the Judge”) dismissing his asylum and human rights appeal. The decision was sent to the parties on 19 April 2024.
2. The error of law hearing in the Upper Tribunal was conducted remotely, with both Mr Aziz and Mr Wain attending by CVP.

### **Anonymity Order**

3. The Judge issued an anonymity direction. Neither representative requested that the order be set aside. As the appellant is currently seeking international protection, I consider that at the present time his private life rights, as protected by article 8 ECHR, outweigh the public right to identify parties to proceedings. In the circumstances it is proper that the anonymity order continue.
4. The order is detailed above.

### **Brief Facts**

5. The appellant is a citizen of Iraq. He is presently aged 29. He arrived in the United Kingdom on 6 August 2019 and claimed asylum. The respondent refused the application for international protection by a decision dated 20 October 2023. The appellant exercised statutory appeal rights to the First-tier Tribunal.
6. The UK Law Firm were on record with the First-tier Tribunal as representing the appellant. A hearing bundle was filed. Placed within it were the appellant’s witness statement and an undated skeleton argument.
7. The hearing was listed before the Judge at the First-tier Tribunal in Manchester on 9 April 2024. When the appeal came before the Judge there was no attendance by either the appellant or the respondent. An explanation was provided for the non-attendance of a Presenting Officer.
8. The Judge observed that no explanation had been provided by the appellant or his legal representations for their non-attendance and no application for an adjournment had been made. At [5] of his decision he observed that he had regard to rules 2 and 4 of the Tribunal Procedure Rules 2014. He decided that it would be fair and just to proceed with the hearing in the absence of the representatives, observing that both parties had received notice of the hearing. He proceeded to consider the appeal before him. The respondent’s decision was promulgated on 19 April 2024 and contained several adverse credibility findings made in respect of the appellant’s evidence. The Judge concluded that the asylum, humanitarian protection, and human rights appeals should be dismissed.
9. Grounds of appeal were drafted on behalf of the appellant by The UK Law Firm. Put simply, it was asserted that neither the appellant nor his legal representatives had received notice of hearing.
10. The appellant was granted permission to appeal by First-tier Tribunal Judge Buchanan by a decision dated 3 May 2024. Judge Buchanan noted that the Judge did not explain in his decision how he reached the conclusion that the appellant had received the notice of hearing. There was no express reference to a member of the Tribunal staff being requested to contact The UK Law Firm, who were on record, and ascertain why there was no attendance on the morning of the hearing. In addition, Judge Buchanan was concerned as to whether adequate

reasoning was provided as to why it was in the interests of justice to proceed in the absence of the appellant.

11. Further to directions from the Upper Tribunal sent to the parties on 3 September 2024, the appellant filed a witness statement dated 4 September 2024 confirming that he had not received the notice of hearing. The same was confirmed by a witness statement from Minesh Dhokia, on behalf of The UK Law Firm, dated 4 September 2024.
12. On 9 September 2024 the respondent placed on CE:file a Rule 24 response, dated 28 May 2024, accepting that the Judge had materially erred in law in proceeding in the absence of the appellant and agreeing that the best course of action was for the decision to be set aside the decision. The respondent further requested that the appeal be remitted back to the First-tier Tribunal. I am grateful to Mr Wain who took steps to upload the Rule 24 response prior to the hearing, consequent to his becoming aware that it had not been served on the appellant or filed with the Upper Tribunal. Mr Wain confirmed the respondent's position before me.
13. I agree that the approach adopted by the respondent is correct. It would have been clear to the Judge that the appellant had taken steps to be ready for the hearing, including filing a hearing bundle and preparing a skeleton argument. The Judge was faced with no explanation from the appellant as to non-attendance. A reasonable expectation would be that he would have asked a member of staff at the Tribunal centre to contact the appellant's legal representatives and ascertain the reasons for non-attendance. Such enquiry would have elicited the response that the notice of hearing had not been received. Provided with that information, this Tribunal would expect the Judge to have adjourned the hearing on the grounds of fairness.
14. In the circumstances the proper course of action is to set aside the decision of the Judge in its entirety and to remit the matter back to the First-tier Tribunal sitting in Manchester.

### **Notice of Decision**

15. The decision of the First-tier Tribunal sent to the parties on 19 April 2024 is set aside in its entirety consequent to material error of law.
16. The appeal is remitted to the First-tier Tribunal sitting at Manchester, to be heard by any Judge other than First-tier Tribunal Judge O R Williams.

*D O'Callaghan*  
**Judge of the Upper Tribunal**  
Immigration and Asylum Chamber

**13 September 2024**