



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/00583/2013

THE IMMIGRATION ACTS

**Heard at North Shields
On 10 July 2013**

**Date Sent
On 22 July 2013**

Before

UPPER TRIBUNAL JUDGE DEANS

Between

MR AMADOU DIARRA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Selway, Solicitor, Halliday Reeves Law Firm

For the Respondent: Mr P Mangion, Home Office Presenting Officer

DETERMINATION AND REASONS

- 1) Judge of the First-tier Tribunal Dickson dismissed his appeal on asylum and human rights grounds. The appellant was absent from the hearing, which took place on 20 February 2013.
- 2) In the grant of permission to appeal it was noted that according to the appellant he was unable to attend the hearing because on the relevant date he was in prison. He did not receive notice of the hearing and because of language problems and his inability to access relevant documents he was unable to communicate with his solicitors and inform them of his whereabouts.

- 3) It was further noted in the grant of permission that the notice of hearing was sent to the appellant's last known address and returned undelivered. The judge decided to determine the appeal on the basis of the documents before him but it was arguably unfair for the appellant not to have had the opportunity of attending the hearing of his appeal.
- 4) At the hearing before me Mr Mangion submitted on behalf of the correspondent that there was a record of the appellant's arrest but not of the length of his detention. He was arrested by British Transport Police on the night of 22-23 December 2012. It is not clear whether he was subsequently remanded in custody on a criminal charge or detained in immigration detention.
- 5) In response Mr Selway referred to a chronology prepared by the appellant's solicitors. This stated that the appellant was taken to HMP Wormwood Scrubs on 23 December 2012 and his son was taken into care by the social services. The appellant's son has a separate appeal before the Tribunal and there was a Case Management Review hearing in respect of this on 4 July 2013 in Bradford.
- 6) Mr Mangion's submission for the Secretary of State was that there was no documentary evidence to support the appellant's claim that he was in custody on the date of the hearing before the First-tier Tribunal, 20 February 2013. I note, however, that there is documentary evidence of the appellant's arrest. In consequence of this the appellant's son was taken into care and the appellant lost contact with his solicitors. It appears that he also lost his accommodation as he was given different accommodation by NASS when he was released from detention. Taking these factors into account, together with the language difficulties the appellant experienced while he was in detention, I am satisfied that it was impractical to expect him to attend the appeal hearing.
- 7) The Judge of the First-tier Tribunal had no knowledge of these matters. It is the responsibility of an appellant to keep the Tribunal informed of his address. Under Rule 56(2) of the Procedure Rules, until a party or representative notifies the Tribunal of a change of address, any documents served on him at the most recent address which he has notified to the Tribunal shall be deemed to have been properly served on him. Having regard to this rule, the judge was entitled to rely upon deemed service of the notice of hearing.
- 8) The judge recorded in his determination at paragraph 25 that there was no appearance on behalf of the appellant at a Case Management Review hearing at Bradford on 6 February 2013. His solicitors had previously written to the Tribunal to say they were no longer acting for him and did not know his current address. The address originally given to the Tribunal for the appellant was stated by Royal Mail to be inaccurate.

- 9) Having recorded these matters the judge then went on to hear the appeal on 20 February 2013 in the absence of the appellant. In proceeding in this way the judge does not appear to have consciously exercised his discretion under Rule 19(1) of the Procedure Rules. This states that the Tribunal may hear an appeal in the absence of a party or his representative if satisfied that the party has been given notice of the date, time and place of the hearing and there is no good reason for such absence. Although the judge recounted some of the circumstances relating to the non-appearance at the Case Management Review hearing, there does not appear to have been any exercise of discretion by the judge at the substantive hearing.
- 10) I am satisfied that there was an error of law by the Judge of the First-tier Tribunal and, although the judge was not aware of the circumstances giving rise to the appellant's absence, the appellant's absence was for reasons which were largely outside his control, although the appellant himself contributed by his conduct to the situation in which he found himself. Nevertheless, for the appeal hearing to have proceeded in these circumstances was procedurally unfair.
- 11) This is an appeal in which the appellant has been deprived of the opportunity of putting his case before the First-tier Tribunal for its consideration and accordingly the appropriate course, in terms of Practice Statement 7.2, is for the appeal to be remitted to the First-tier Tribunal.
- 12) It may further be appropriate for this appeal to be heard before the First-tier Tribunal with the appeal by the appellant's son, which is also pending. For this reason I would propose that this appeal be listed for a Case Management Review hearing in North Shields before it is listed for a substantive hearing.

Conclusions

- 13) The decision of the First-tier Tribunal discloses an error on a point of law such that it is set aside and will be remade upon remittal to the First-tier Tribunal.

Anonymity

- 14) The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum & Immigration Tribunal (Procedure) Rules 2005.

Signed

Date

Judge of the Upper Tribunal

