



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

Appeal Number: AA/04701/2014

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 16<sup>th</sup> December 2014**

**Decision & Reasons  
Promulgated  
On 6<sup>th</sup> March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MR AMIR IBRAHIM SIRRAH  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr G Brown, Counsel

For the Respondent: Mr A McVeety, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Sudan born on 1<sup>st</sup> January 1990. The Appellant claims to have left Sudan in November 2013 and travelled to Libya. Alternatively the Appellant claims to have left Sudan in July or August 2013. The Appellant however claims to have arrived in the UK on 11<sup>th</sup> April 2014 by lorry and claimed asylum at the Asylum Screening Unit in Croydon the same day.

2. On 18<sup>th</sup> June 2014 the Home Office served the Appellant with a notice of refusal of his application. In refusing the application the Secretary of State noted that the Appellant claimed to be at persecution in Sudan on account of his political opinion as he was a deserter from the army and had attended anti-regime demonstrations and consideration was also given to his Nuba ethnicity and whether this would mean that he was at risk on return to Sudan.
3. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Ransley sitting at Manchester on 8<sup>th</sup> September 2014. In a determination promulgated on 10<sup>th</sup> September 2014 the Appellant's appeal was dismissed on both asylum and human rights grounds and the Appellant was found not to be in need of humanitarian protection.
4. On 22<sup>nd</sup> September 2014 the Appellant lodged Grounds of Appeal to the Upper Tribunal. On 2<sup>nd</sup> October 2014 Judge of the First-tier Tribunal Molloy granted permission to appeal. Judge Molloy noted that the Grounds of Appeal alleged that the Appellant had intended to be present for his appeal hearing scheduled for 8<sup>th</sup> September 2014 but was not aware of that date. His solicitors furnished not only this explanation but also documentary evidence in support from the Appellant and his caseworker. Although this was entirely unknown by Judge Ransley at the time Judge Molloy found that there may well have been an error of law committed by the Tribunal in not informing the Appellant of the date for the full hearing of his appeal.
5. On 21<sup>st</sup> October 2014 the Home Office served the Secretary of State's response to the Grounds of Appeal under Rule 24. The Rule 24 response noted that the Appellant claimed that due to an administrative error he was not properly notified of the Tribunal hearing but pointed out that it would be for the solicitors to demonstrate that this was the case at the next hearing particularly as the address was verified at the hearing and there was no mention at that stage that the solicitors had an incorrect address on record. The response continued that the Tribunal may however feel satisfied, having considered the evidence, that the Appellant was not aware of the notice of hearing and that determination cannot be sustained as a result of procedural unfairness.
6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel Mr Brown. Mr Brown is familiar with this matter having appeared before the First-tier Tribunal and being the author of the Grounds of Appeal to the Upper Tribunal. The Secretary of State appears by her Home Office Presenting Officer Mr McVeety.

### **Submissions/Discussions**

7. The matter is considerably assisted by the concession made by Mr McVeety on behalf of the Secretary of State in accepting that the grounds

are made out by showing that the Appellant was not personally served with the notice of hearing for the First-tier Tribunal. He accepts that that creates an element of unfairness and is agreeable that the matter should be set aside and remitted to the First-tier Tribunal for rehearing.

## **The Law**

8. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
9. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

## **Findings**

10. The concession made by Mr McVeety requires the endorsement of the Upper Tribunal. I do not seek to go behind that endorsement. If there is a procedural unfairness then that must constitute an error of law and justify an Appellant having his case reheard. He emphasised that there can be no criticism of Judge Ransley who was completely unaware of this scenario when she heard the appeal at first instance but I acknowledge that the paper trail does indicate that the Appellant did not receive the requisite notice albeit that I must admit that it is strange that his instructed solicitors failed to ensure he was present particularly bearing in mind that they managed to arrange for Counsel to appear on his behalf. In such circumstances I am prepared to find that there is a material error of law in the decision of the First-tier Tribunal Judge and that the matter be remitted to the First-tier Tribunal for rehearing and that none of the findings of fact are to stand.

## **Decision and Directions**

The decision of the First-tier Tribunal contains a material error of law and the decision of the First-tier Tribunal Judge is set aside and the matter is remitted to the First-tier Tribunal to be reheard by any Immigration Judge other than Immigration Judge Ransley. The following directions are made:

- (1) That the appeal be reheard on the first available date at Manchester 28 days hence with an ELH of three hours.
- (2) That with none of the findings of fact to stand the matter be reheard before any Immigration Judge in the First-tier Tribunal other than Immigration Judge Ransley.
- (3) That there be leave to either party to file and serve any additional evidence upon which they seek to rely at least seven days pre-hearing.
- (4) That a Sudanese Arabic interpreter is required (not a North African Arabic interpreter).

No anonymity direction is made.

Signed

Date **16<sup>th</sup> December 2014**

Deputy Upper Tribunal Judge D N Harris