
**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: AA/04797/2014**

**THE IMMIGRATION ACTS**

| **Heard at: Field House** | **Determination Promulgated** |
|---|---|
| **On 12 November 2015** | **On 18 November 2015** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHANA**

**Between**

**MA**
(ANONYMITY DIRECTION MADE)

Appellant

**and**

**THE SECETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr T Gaisford of Counsel
For the Respondent: Mr C Avery, Senior Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, a citizen of Iraq, appealed to the First-tier Tribunal against the decision of the respondent dated 10 March 2015 refusing his claim for asylum and humanitarian protection in the United Kingdom. The First-tier Tribunal Judge Anstis dismissed the appellant's appeal in a determination dated 4 September 2015. Permission to appeal was granted by First-tier Tribunal Judge Lambert on 28 September 2015 saying that there has been an arguable administrative error of law by the Judge proceeding with the appeal in the absence of the appellant.

2. Thus the appeal came before me.

## The findings of the First-tier Tribunal

3. The First-tier Tribunal dismissed the appellant's appeal for asylum and humanitarian protection.

4. At paragraph 3 of the determination the Judge stated "the appellant did not attend and was not represented at this hearing. No appellant's bundle or witness statements have been filed. On 3 June 2015, the appellant's representatives made an application to adjourn the hearing listed for 17 August. This application was refused on 3 August 2015 by First-tier Tribunal Judge Plumtree.". The Judge having satisfied herself that the parties had been notified of the hearing and in the interests of justice proceeded to hear the appeal in the absence of the appellant.

## The grounds of appeal

5. The appellant's grounds of appeal are in summary as follows. The appellant and his legal representatives were unaware that the hearing was due to take place on 17 August 2015 and believed that a new hearing date would be scheduled. "The tribunal is informed that in a telephone call with Tribunal staff on 3 August 2015, the appellant's legal representatives were informed that the notice of the new hearing date together with the Asylum Prehearing Review Form and the Tribunal's directions were to be sent by the Tribunal to the appellant's representatives on or after 3 August 2015 and before the hearing date of 17 August 2015".

6. "It was confirmed that the above correspondences were to be sent after the prehearing review. The Tribunal is informed that these correspondences were never received by the appellant or his legal representatives." The legal representatives only received notice that the hearing had gone ahead on 17 August 2015 after receiving the First-tier Tribunal's determination on 7 September 2015.

7. The Judge therefore fell into error by finding that the appellant's representatives were aware that the hearing was to take place on 17 August 2015 when they were not so aware. The appellant held a legitimate expectation that the hearing dated 17 August 2015 was to be adjourned and that a notice of hearing was to be sent to his legal representatives, as confirmed by the Tribunal staff on 3 August 2015. It would be in the interests of natural justice for this appeal to be reheard by the First-tier Tribunal.

## The hearing

8. At the hearing I heard submissions from both parties as to whether there has been an error of law. On behalf of the appellant Mr Gainsford submitted that the appellant was not aware of what was going on. The application for an adjournment was made in June 2015 because the appellant wanted a certain

barrister to represent him and when he discovered that the barrister would not be available for that date, an adjournment was requested from the Tribunal. The solicitors relied on the information given to them by the Tribunal on the telephone on 3 August 2015. The solicitors acted in good faith. I must consider the interests of justice for this appellant. The appellant is a vulnerable person and it is important that he has a fair hearing. The Judge struggled with reference to Article 8 because she said in her determination that she has no information as to how Article 8 is engaged or to be applied. The fact-finding has not been done and therefore the determination is not safe.

9. Mr Avery on behalf of the respondent relied on the Rule 24 response. He submitted that the solicitors knew that the hearing date was 17 August 2015 and made no effort to find out whether the adjournment request had been successful. The central matrix of the case was not in dispute. The appellant's mental health issues were known before the hearing date was set. The appellant can apply for Article 8 if he feels that has not been considered.

**Decision on Error of Law**

10. The appellant submits that his representatives made an application for the appeal which was set down to be heard on 17 August 2015 to be adjourned. The appellant also asserts that he and his legal representative did not receive a notification that the appeal would go ahead on 17 August 2015 because they did not receive an Asylum Prehearing Review Form or directions made by the Tribunal.

11. It would appear that after making an application for an adjournment, the appellant and his representatives proceeded on the basis that they had been granted the adjournment. There is no credible evidence of any effort made by the solicitors to find out whether the adjournment application had been granted. The hearing was set down for 17 August 2015 and that is the day that the hearing took place. It was incumbent on the appellant and his legal representatives to find out whether the adjournment application was successful. They did not. The appellant and his legal representatives cannot assume that if they make an application for an adjournment, it is an inevitability that it will be granted.

12. At paragraph 5 of the grounds of appeal it is stated that the first time the solicitors realised that the appeal had gone ahead on 17 August 2015 was when they received the First-tier Tribunal's determination on 7 September 2015. The solicitors rely on a communication by a member of staff of the Tribunal on the telephone on 3 August 2015 that the Tribunal will notify them about the new hearing date. That would mean that as of 3 June 2015 when they made their application and 3 August 2015, they did nothing to find out whether their application had been successful. It is the duty of the solicitors to find out whether there adjournment request was successful and not rely on a verbal communication from the Tribunal.

13. Be that as it may, in the interests of justice, the appellant should be given an opportunity to provide evidence as to the risk on return to Iraq for the appellant. The appellant is a vulnerable individual due to his age and mental condition. He should not be penalised for his solicitor's oversight and lack of due diligence.

14. The Judge noted in her determination that the appellant has grandchildren in this country but she has no information from which you can conclude that their best interests would require the appellant to remain in the United Kingdom, nor does she have any information as to how it is said that Article 8 applies to the appellant's situation. Therefore the appellant's evidence was necessary for the Tribunal to come to sustainable conclusions.

15. There are also matters in respect of the appellant's claim for asylum and humanitarian protection where the Judge notes that she does not have evidence. Iin light of the guidance in the country guidance case of **HM and others (article 15 (c) CG [2012] UKUT 00409 (IAC)** where it is said that "each case must be carefully considered with regard to the particular profile of the claimant". The appellant's oral as well as any documentary evidence would assist the Tribunal to come to conclusions after a full evaluation of the appellant's personal circumstances.

16. The determination in itself has not been criticised and nor can it be. The Judge made sustainable findings on the evidence that was before her but justice demands that the appellant's evidence is also considered given the possible severity of the consequences to the appellant if the right decision is not made.

17. I find that there is a material error of law in the determination of the First-tier Tribunal Judge in respect of procedural fairness and the Judge's decision is set aside. I direct that the appeal be placed before the First-tier Tribunal other than Judge Anstis.

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**DECISION**

Appeal be remitted to the First-tier Tribunal for rehearing

Signed by

Mrs S Chana
Deputy Upper Tribunal Judge 11th day of November 2015