



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/09719/2015

THE IMMIGRATION ACTS

Heard at Taylor House  
On 22 October 2015

Decision & Reasons Promulgated  
On 10 May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

MR MOHSIN KHAN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Ms Willocks-Bristoe, Home Office Presenting Officer

DECISION AND REASONS

1. Judge J S Law (the Judge) dismissed the appellant's appeal against the respondent's refusal dated 20 February 2015. That was because the Judge found the notice of appeal failed to set out the grounds, such grounds had been requested from the appellant but none had been received. The Judge went on to determine the appeal under Rule 19 of the 2014 Rules, taking into account **RS and FD (appeals without grounds)** Jamaica [2006] UKAIT 00064.

2. Grounds lodged on behalf of the appellant said that his representatives submitted his appeal via fax on 9 March 2015. They were seventeen pages in total which consisted of the appeal form, refusal letter and grounds of appeal. Subsequently, the Tribunal notified the appellant's representatives that grounds of appeal were to be lodged by 23 April 2015 such that they were to be lodged again.
3. Judge Hodgkinson granted leave to appeal on 22 September 2015. He found, inter alia:

“Documents submitted with the current application would indicate that the original grounds of appeal *may* have been received by the Tribunal but that, due to a possible administrative error, they might not have found their way onto the Tribunal's file. If such is established, then it would amount to an arguable error of law.”
4. The respondent lodged a Rule 24 response. The respondent said the grounds did nothing more than assert that grounds of appeal were submitted on behalf of the appellant. There was no evidence to support that assertion. The respondent did not accept that a procedural impropriety amounting to an error of law had arisen and an oral hearing was requested.
5. Neither the appellant nor his representatives attended the hearing. I was satisfied that both the appellant and his representatives had been notified of the date and time of the hearing. In the circumstances, I considered that it was in the interests of justice to proceed with the hearing in accordance with Rule 38 Tribunal Procedure (Upper Tribunal) Rules 2008.

### **Submissions on Error of Law**

6. Ms Willocks-Bristoe submitted that the appellant had never supplied evidence that substantiated the grounds of appeal to the Upper Tribunal such that I should find that the judge made no error of law.

### **Conclusion on Error of Law**

7. The grounds of appeal for permission to appeal to the Upper Tribunal read as follows:
  1. *The decision made by Immigration J S Law through his determination promulgated dated 2<sup>nd</sup> July 2015 is unlawful and therefore, I did not have a fair trial.*
  2. *On 9<sup>th</sup> March 2005, my legal representatives submitted my appeal via fax. Please find enclosed the fax report. A cover letter from Immigration Chambers confirms that the documents were seventeen pages in total which consisted of the appeal form, refusal letter along with the grounds of appeal.*
  3. *Therefore, after 16/4/2015, my legal representative received a notice from the Tribunal requesting for the grounds of appeal and the deadline to send these grounds were 23/4/2015.*

4. *On 23/4/2015, a fax was submitted along with my legal representatives' cover letter which included the grounds of appeal via fax number: 08707395881. Fax confirmation report is enclosed.*
5. *In light of the above, the decision of the First-tier Tribunal Judge dated 2<sup>nd</sup> July 2015 is inappropriate given the procedural unfairness."*
8. Whilst at [2] of the grounds, there is reference to a fax report and a cover letter confirming that the documents were seventeen pages in total, none of the documentation was ever made available either to the First-tier Tribunal, the Upper Tribunal or the respondent.
9. Whilst [4] of the grounds refers to a fax confirmation report enclosed, none was enclosed.
10. Whereas Judge Hodgkinson said the grounds of appeal "*may*" have been received by the Tribunal but due to a possible administrative error, they might not have found their way onto the file to be considered by the judge, I find no evidence of the same. On the contrary, I find on the evidence before me that no original grounds of appeal were ever sent to the First-tier Tribunal nor do I accept that any supplementary documentation was sent to the Upper Tribunal as an attachment to the grounds of appeal.
11. I conclude that the decision does not contain a material error of law, such that the decision of the First-tier Tribunal should be set aside.

**Notice of Decision**

The decision of the First-tier Tribunal contains no error of law and shall stand.

No anonymity direction is made.

Signed

Date 22 October 2015

Deputy Upper Tribunal Judge Peart