



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

Appeal Number: AA/04080/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 27 July 2017**

**Decision & Reasons Promulgated
On 01 August 2017**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

[S U]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. P. Turner of counsel, instructed by Bespoke Solicitors

For the Respondent: Ms K. Pal, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. It is the Appellant's case that he is a national of Burma and a Rohingya Muslim, who was born on [] 1985. It is also his case that he first entered the United Kingdom from Bangladesh in September 2004 and applied for asylum on 19 February 2014. The Respondent refused his

application on 23 February 2015. He appealed and his appeal first came before First-tier Tribunal Judge Wilsher on 3 August 2015, when the Appellant gave substantial oral evidence. He mentioned attending demonstrations at the Burmese Embassy in support of the Rohingya and the First-tier Tribunal Judge adjourned the hearing part-heard in order for the Appellant to obtain further evidence about his attendance at such demonstrations.

2. In order to demonstrate that the Appellant had been a Rohingya refugee in Bangladesh, the Appellant had submitted a Refugee Family Book, which had been issued to his father, Ali Ahammad, dated 16 February 1995, and bearing the MRC No.[]. The Appellant was listed on this document. However, at the adjourned hearing on 28 September 2015, the Respondent submitted a Refugee Family Book in the name of Ali Ahmed, which had the same MRC number but did not contain the Appellant's name.
3. First-tier Tribunal Judge Wilsher adjourned the hearing for a second time in order for the Appellant to respond to this new evidence. However, the Appellant did not appear at the hearing on 25 January 2016 and the First-tier Tribunal Judge went on to dismiss his appeal in a decision, promulgated on 10 March 2016.
4. The Appellant appealed against First-tier Tribunal Judge Wilsher's decision and permission to appeal was granted by First-tier Tribunal Judge Andrew, who found that she was satisfied that it was possible that the Appellant was not aware of the hearing that took place on 25 January 2016 and, therefore, the decision may be unfair.

ERROR OF LAW HEARING

5. It would appear from the decision of First-tier Tribunal Judge Wilsher that his previous directions had only been partially complied with by the Respondent as there was no copy of the Refugee Family Book for Ali Ahmed or any copies of the grant of leave to his family on file and no further interview had taken place. It appeared that these documents had been shown to First-tier Tribunal Judge Wilsher but that he had not been provided with copies of them. The Home Office Presenting Officer had copies of these in her file and was initially reluctant to provide them to the Tribunal or the Appellant's counsel due to issues of Data Protection. But she subsequently accepted that, if the Respondent wished to rely on them, copies had to be provided to the Appellant and to the Tribunal and so copies were made. She

also said that a decision would be taken by the case worker as to whether it was necessary to re-interview the Appellant and make a further decision on his application.

6. I also heard oral submissions from counsel for the Appellant and further submissions by the Home Office Presenting Officer and I have referred to the content of both submissions, where relevant, below.

DECISION

7. I looked at the documents and correspondence in the Tribunal file, which related to the arrangements being made for the hearing on 25 January 2016.
8. I have noted that Time Solicitors in Leytonstone previously represented the Appellant and on 4 January 2016 they were sent notice that his adjourned appeal hearing would be heard on 27 June 2016. They were then sent a second notice on 7 January 2016, which brought the hearing date forward to 25 January 2016. Meanwhile, it is the Appellant's case that Time Solicitors closed down and there was a letter of authority on the file, dated 9 January 2016, which indicates that on that day he instructed his present solicitors. There is also a letter from Bespoke Solicitors, dated 21 June 2016, to HMCTS at Taylor House, which states that the notice, dated 4 January 2016, was passed to them. There was no mention of the letter sent on 7 January 2016.
9. I have also noted that in a separate letter from Bespoke Solicitors to the Home Office Presenting Officers Unit, dated 21 June 2016, reference is made to an earlier letter to the Unit, dated 20 January 2016, asking when they can expect disclosure of the documents directed by First-tier Tribunal Judge Wilsher on 28 September 2015. There is a copy of these directions on file, which indicated that the Respondent had been directed to file and serve any relevant documents from Ali Ahmed's asylum file, re-interview the Appellant and file and serve any fresh decision at least 28 days prior to the adjourned hearing. Therefore, it would appear that on 20 January 2016, Bespoke Solicitors and the Appellant were waiting for the Respondent to comply with these directions and had no idea that the adjourned hearing had been listed for 25 January 2016. It also raises the question of why this letter to the Home Office Presenting Officers Unit was not brought to the attention of First-tier Tribunal Judge Wilsher at that

hearing. If it had been it would have indicated that the Appellant did not have notice of the hearing.

10. There is also a fax from HM Courts & Tribunal Service on the Tribunal file, which indicates that on the day of the hearing the clerk to the court phoned Time Solicitors and left a voice mail and it is not disputed that the second notice was posted to them by first class post on 7 January 2016. However, Rule 28 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 states that:

“If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal-

- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
- (b) considers that it is in the interests of justice to proceed with the hearing”.

11. The evidence before First-tier Tribunal Judge Wilsher was sufficient to meet the requirements in Rule 28(a) and he confirmed, in paragraph 2 of his decision, that he was satisfied that the Appellant had been served with notice of the hearing. However, he did not go on to consider whether it was in the interests of justice to proceed with the hearing.

12. In particular, he did not take into account the fact that the Appellant had attended previous hearings and engaged with the appeal process. He also did not take into account the fact that, as a result of the directions made at the previous hearing, the Appellant would have been expecting disclosure of documents and a further interview before any adjourned hearing took place or that the adjourned hearing had originally been set down for 27 June 2016.

13. Therefore, I find that the First-tier Tribunal Judge failed to comply with Rule 28(b).

14. I also note that the first part of the head note in *MM (unfairness; E & R) Sudan* [2014] UKUT 105 (IAC) states that “where there is a defect or impropriety of a procedural nature in the proceedings at first instance this may amount to a material error of law requiring the decision of the First-tier Tribunal (the “FtT”) to be set aside”.

15. As a consequence, I find that there was a procedural irregularity that undermined the legality of the decision reached by the First-tier Tribunal Judge and which amounted to an error of law.

DECISION

- (1) The Appellant's appeal is allowed.
- (2) The decision by First-tier Tribunal Judge Wilsher is set aside.
- (3) The appeal is remitted to the First-tier Tribunal to be heard *de novo* before a First-tier Tribunal Judge other than First-tier Tribunal Judge Wilsher.

Nadine Finch

Signed

Date 27 July 2017

Upper Tribunal Judge Finch