



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

Appeal Number: IA/12371/2015

THE IMMIGRATION ACTS

Heard at Field House

Decision and Reasons Promulgated

On: 7 July 2017

On: 17 July 2017

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

**MR AKHTAR HUSSAIN
(anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Rehman of Counsel

For the Respondent: Mr S Staunton, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India born on 12 May 1983. He appeals against the decision of the respondent dated 16 April 2015 refusing his application for leave to remain in the United Kingdom as a Tier 1 (entrepreneur) Migrant under paragraph 245 DD (b) of Appendix A of the Immigration Rules.
2. This is the second time that the appellant has complained that he did not get an oral hearing. The first time this happened, Upper Tribunal Judge Pinkerton set aside the First-tier Tribunal's decision dated 6 December 2016 because there had been a procedural irregularity and stated that it was in the interests of justice to set it aside and

he explained the appellant's request for an oral hearing was sent on 15 December 2015 although subsequently the appellant solicitors requested by a faxed letter of 10 December 2015 that the appeal be decided on the papers and at the same time sought further time to provide evidence in support of the appeal.

3. Judge Pinkerton, stated that the Judge evidently was not aware of the dual request made by the appellant solicitors, for a paper hearing and at the same time to file evidence. Indeed, it appeared from the decision that the Judge considered the appellant's absence prejudicial to his appeal. A notice of the upper Tribunal's decision was sent to the appellant's home address that the Upper Tribunal informing him that there was an error of law and his appeal had been remitted to the First-tier Tribunal for a fresh paper determination. He was also informed that he must send in any written evidence and submissions to the Tribunal and the respondent by 11 October 2016. No further evidence was received and the First-tier Tribunal proceeded with the appeal and made his decision, against which he appealed.
4. Permission to appeal against the decision of first-tier Tribunal Judge Coll was granted by first-tier Tribunal Judge Parkes on 23 May 2017 stating that the appellant did not attend the hearing having requested a paper hearing of the appeal. The grounds of appeal state that the appellant did not request a paper hearing and had not received a letter dated 3 August 2016 giving him the hearing date or directions for the service of evidence. This case has previously been considered on the papers but was set aside on the appellant's own application. He stated that his previous solicitors had not sought a paper hearing but has sought time for the service of evidence. However, the fact that he sent with that application clearly indicated an application for the case to be considered on the papers. The decision setting aside the first disposal of this appeal was dated 3 June 2016 and clearly referred to the paper hearing request. This was sent to the appellant on 12 July 2016 and clearly indicated that the original decision had been set aside and would be remade and a further notice followed on 31 August 2016.
5. The Judge continued that the fact that the appellant sought paper disposal is clearly indicated by the representatives fax of 10 December 2015. The appellant does not complain that he did not get the set aside notice and therefore would have known from that what the position was. That said he had paid for a paper hearing and was entitled to one without an extra fee although he would clearly have been aware that there would be further hearing and he had the opportunity to present further evidence. It is far from clear that the appellant will succeed but there are a number of issues that arise and on that basis permission to appeal was granted.
6. At the hearing, the appellant said that he had paid for an oral hearing and he was entitled to one. At the hearing, the appellant said that he has changed his home address which is why he did not receive the notice. However, the appellant did not notify the Home Office of his change of address. He blames the change of address for not receiving the notice of hearing of his appeal. While there have been administrative errors, the appellant has contributed to the confusion by not notifying the Home Office of his change of address.

7. Be that as it may, out of an abundance of caution and fairness, I remit the appeal to the First-tier Tribunal to be considered *de novo*. I therefore under Practice Direction 17 remit the appeal to the First-tier Tribunal for a hearing on the first available date.

8. I further direct that the appellant file his evidence within two weeks of the hearing date. The respondent has a week to file any response. It is imperative that the hearing notice is sent to the appellant at his new address, which is indicated on the file. I have also asked the appellant to remain in contact with the Home Office in respect of his appeal. The appellant requires an oral hearing and will appear before the First-tier Tribunal on the next hearing date.

DECISION

The appeal is remitted to First-tier Tribunal.

Signed by

A Deputy Judge of the Upper Tribunal

Mrs S Chana

Dated the 12th day of July 2017