



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

Appeal Number: IA/13898/2015

THE IMMIGRATION ACTS

**Heard at Manchester IAC
On 27th July 2017**

**Decision and
Promulgated
On 28th July 2017**

Reasons

Before

UPPER TRIBUNAL JUDGE COKER

Between

**ZAIGHUM MEHDI
(Anonymity direction not made)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: no appearance

For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was granted permission to appeal on the grounds that it was arguable that his inadvertent error in missing the date of his hearing before the First-tier Tribunal amounted to an error of law because his oral evidence may have made a material difference to the outcome of his appeal.
2. The appellant had appealed the decision of the respondent refusing to grant him leave to remain on the grounds of his private and family life. The appeal was

determined on the papers, neither the appellant nor the respondent appearing. The appellant's grounds of appeal to the First-tier Tribunal were general and did no more than, in essence, assert that the decision was incompatible with his human rights. The grounds stated that "additional grounds" would be submitted with a paginated indexed bundle at the time of the hearing. The respondent's bundle included the documents the appellant had relied upon in support of his application for leave to remain.

3. The appellant accepts he received the notice of hearing but sent it elsewhere and didn't recall the date of hearing correctly. The Notice of Hearing directs the appellant to file the documents he wishes to rely upon. He did not do that and gave no explanation for failing to do so. Even if he failed to recall the correct hearing date there was nothing to prevent him filing documents upon which he sought to rely.
4. Whether oral evidence could have affected the outcome of the hearing is not relevant, in this instance, to whether there is an error of law by the First-tier Tribunal judge. The failure of an appellant to attend the hearing in the circumstances of this appellant cannot be an error of law by the judge. It is surprising that he was given permission to appeal.
5. The appellant is unrepresented. I have considered the determination of the judge with that in mind and considered whether there are, in fact, any material errors of law such that the decision should be set aside to be remade. The judge in paragraph 14 refers to exceptional circumstances. Although it appears the judge may have misunderstood the legislative framework within which he is required to reach his decision it is plain that on the basis of the evidence before him there was simply no evidence upon which a decision other than to dismiss the appeal could have been reached. The appellant had simply not filed any evidence; the judge considered that which had been sent to the respondent. The appellant could not conceivably have won his appeal on that evidence. The failure to attend the hearing is not an error of law on the part of the judge.

Conclusion

6. There is no error of law. I do not set aside the decision of the First-tier Tribunal. The decision of the First-tier Tribunal stands namely the appeal is dismissed.



Date 27th July 2017

Upper Tribunal Judge Coker