



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/10300/2016

THE IMMIGRATION ACTS

Heard at Field House
On 16th July 2018

Decision & Reasons Promulgated
On 2nd August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

MD AURANG ZEB
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance or representation

For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Hussain dismissing his appeal against a refusal of his application for a residence card as the spouse of an EEA national on the basis of the Appellant's non-compliance with Rule 19 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 specifically at Rule 19, subparagraph 5. The Appellant appealed against that decision and was granted permission to appeal by First-tier Tribunal Judge Birrell in the following terms:

“The Appellant is unrepresented and the grounds in general terms disagree with the conclusion drawn by the Judge. Particularly as the Appellant is unrepresented I have read the decision very carefully to see if there is an obvious error of law. The Judge dismissed the case in essence because the Appellant did not provide with the appeal a copy of the reasons for refusal letter dated 9 August 2016, the decision being appealed. Nor was it contained within the Respondent’s bundle. The Tribunal obtained a copy of the Notice of Decision but this in fact contained insufficient information according to the Judge at paragraph 8 to make findings of fact. Given that the Appellant’s notice of appeal was accepted by HMCTS in Leicester and a file opened for the Appellant it was unfair to later take the point under Rule 19 that he had failed to provide a copy of the reasons for refusal without putting the Appellant on notice and giving him the opportunity to address the issue. The grounds disclose an arguable error of law.”

2. The Appellant did not attend the hearing and was not legally represented. I have made efforts through the clerk to contact the Appellant in the hope of discovering whether he did not want to attend the hearing today. However, we do not appear to have a contact telephone number for the Appellant and given that the notice of hearing has been sent to the Appellant’s address and there is every indication that he would have been notified of the date of this hearing, since receipt of the notice of 18th June 2018, I have decided to proceed in the interests of justice and expediency.

Error of Law

3. I am grateful to Ms Everett for her concise and pragmatic submissions on behalf of the Secretary of State. In light of the grant of permission and my own views, I do find that there is an error of law in the judge’s decision in that the judge too readily dismissed the appeal on the basis of Rule 19, subparagraph 5 of the First-tier Tribunal Procedure Rules, in that whilst the Appellant must provide certain documents with the Notice of Appeal and the appeal form, he did provide a copy of the refusal to issue a residence card and the notice of immigration decision even of itself but appears to have failed to provide the reasons underlying that decision. I pause to observe, in theory, there is a document which would form the basis for the appeal in its technical form albeit that document does not contain the Secretary of State’s reasons. However, given that the Appellant was not notified by HMCTS staff prior to the date of the hearing on the papers that the Tribunal had not received the reasons for refusing to grant a residence card and given that Rule 19 of the First-tier Tribunal Procedure Rules appears under Chapter 1 of the Rules, which is entitled “*Before the hearing*”, in my view, these are matters which should have taken place prior to the hearing on the papers and given those various factors, in my view it was unfair to dismiss the appeal without first giving the Appellant the opportunity to rectify his omission and provide the reasons for refusal prior to the hearing proceeding. On that basis the judge should have called out for the refusal letter from the Appellant and adjourned the hearing on the papers to allow for that to take place (particularly if the Respondent had failed to serve a Bundle which would normally contain this document).

4. In respect of the relevant authorities that support this position and the deprivation of a fair hearing, I make my decision in light of the Court of Appeal authority in *SH (Afghanistan) v Secretary of State for the Home Department* [2011] EWCA Civ 1284.
5. In light of the above findings I set aside the decision in its entirety.

Notice of Decision

6. The appeal to the Upper Tribunal is allowed.
7. The appeal is to be remitted to be heard by a differently constituted bench on the papers.
8. No anonymity decision made.

Directions

9. Standard directions are to be issued for a remitted paper hearing.
10. The paper hearing is to be remitted to Hatton Cross (unless the Appellant requests an oral hearing and pays the extra fee for this purpose).
11. I direct that the Appellant provide a copy of the reasons for refusal of the grant of a residence card no later than fourteen days before the remitted hearing before the First-tier Tribunal.
12. I further direct that should the Appellant fail to do so, the Respondent should attempt to assist the Tribunal and provide this document no later than seven days before the remitted hearing (which should not be a great imposition given that the Respondent would surely have a copy of the decision that he drafted).

Signed

Date: 27.07.2018

Deputy Upper Tribunal Judge Saini