



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/14876/2017

THE IMMIGRATION ACTS

Heard at Field House
On 12 July 2018

Decision & Reasons Promulgated
On 30 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

MOHAMMAD SAYEM HOSSAIN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. Gibson, Visa Inn Immigration Specialists
For the Respondent: Ms. J. Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Iqbal, promulgated on 27 April 2018, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse further leave to remain.
2. Permission to appeal was granted as follows:

"The grounds requesting permission to appeal to the Upper Tribunal argue that the judge erred in that the appeal was concluded on the papers in the absence of the bundle of documents lodged by the respondent and also the bundle of documents lodged by the appellant.

It is arguable that there has been an administrative or other error leading to unfairness to the appellant and hence an error of law.”

3. At the hearing I found that the decision involved the making of a material error of law and I remitted the appeal to the First-tier Tribunal to be reheard.

Error of Law

4. The grounds of appeal refer to the bundle of documents which the Appellant provided to the Tribunal. At [3] of the grounds it states:

“However, on the 29 March 2018, the bundle to which the IJ refers was submitted by our firm - by Special delivery SF584348365GB, and was signed for by the Tribunal on the 3 April 2018”.

5. With the grounds of appeal the Appellant included a “Track and Trace” document which confirms that the bundle was signed for on 3 April 2018, and the name given is “Assulym”.
6. On the file before me are two bundles, the Appellant’s bundle and the Respondent’s bundle, bound together with an elastic band. On the cover page of the Appellant’s bundle is a sticker which shows the same reference number as is indicated in the “Track and Trace” - SF584348365GB. Further there is a stamp at the bottom of this page which states “Hatton Cross received 03 Apr 2018.” The Respondent’s bundle indicates that it was sent on 5 March 2018.
7. On a slip of paper attached to the front of the two bundles which are bound together with an elastic band is a handwritten note which states “received after sent out.”
8. I find that, when the decision was written on 20 April 2018, and when it was promulgated on 27 April 2018, the Tribunal was in possession of both the Appellant’s and the Respondent’s bundles. I do not know why these bundles were not on the file which was provided to the Judge. Given the principle that the Judge is seized of the matter until promulgation, I find that this failure to ensure that the Judge had the bundles prior to his consideration of the appeal, and the promulgation of his decision, has resulted in a procedural unfairness to the Appellant.
9. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party’s case to be put to and considered by the First-tier Tribunal. In the circumstances, given the procedural nature of the error, and the extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Notice of Decision

10. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside.
11. The appeal is remitted to the First-tier Tribunal to be remade.
12. The appeal is not to be heard by Judge Iqbal.
13. No anonymity direction is made.

Signed

Date 24 July 2018

Deputy Upper Tribunal Judge Chamberlain