



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/20473/2016

THE IMMIGRATION ACTS

Heard at Field House
On 10 May 2018

Determination Promulgated
On 15 May 2018

Before

Deputy Upper Tribunal Judge MANUELL

Between

BERNARD [K]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr C Avery, Home Office Presenting Officer

DETERMINATION AND REASONS

1. Permission to appeal was granted by First-tier Tribunal Judge Doyle on 7 March 2018 against the dismissal of the Appellant's Article 8 ECHR appeal by First-tier Tribunal Judge Courtenay in a decision and reasons promulgated on 9 January 2018. The Appellant claimed to be a national of Sierra Leone, born on 10 December 1978. He relied on his relationship to his partner and

their two young sons. He has been in the United Kingdom as an overstayer from mid 2001 onwards.

2. The appeal was heard by Judge Courtenay from the Hatton Cross hearing centre's float list. The Appellant did not attend and had not submitted any bundle. Permission to appeal was granted on the basis of his assertion that he had not received notice of the hearing nor indeed the Home Office's decision refusing his application dated 15 August 2017. That had been a revised decision following the earlier decision which had commenced the appeal process dated 9 August 2016.
3. Judge Courtenay was satisfied that the Appellant had been notified of the appeal hearing and there was nothing in the tribunal's appeal file to indicate the contrary. Unfortunately the Appellant had not supplied his mobile telephone number on his Notice of Appeal form and there was no means of checking why he was not present for the hearing. The judge cannot be criticised in any way for her decision to proceed and her full and careful determination would not be susceptible to challenge were it not for the service issue.
4. The Appellant attended the Upper Tribunal hearing with his partner and their two young sons. He confirmed that his home address had not changed for many years. He confirmed that he had not received either the Home Office's fresh decision nor the notice of hearing from the tribunal. He reported fortnightly to the Home Office and had enquired regularly whether there was news of his case. He was determined to pursue it and most certainly would not have ignored any documents sent to him about the appeal. He wanted to explain his case.
5. Mr Avery declined the opportunity to cross examine as there was no positive evidence on which to challenge the Appellant's account, save the fact that no post had been returned to either the Home Office or the tribunal. The Respondent's stance was that the judge had been entitled to proceed and that there was no error of law in the decision and reasons.
6. The Appellant was in the position of having to prove a negative, i.e., no receipt of two important documents. No evidence was produced to contradict his account. His address had not changed for many years. It would be strange if a person who had continued to report as required by the Home Office would ignore vital correspondence from the Home Office. The Appellant, who was articulate, gave every indication of frankness. The tribunal

accepts his account that he had not received the revised Home Office decision nor the notice of the tribunal hearing.

7. Hence the tribunal finds that there was an inadvertent material error of law in the decision and reasons, through no fault of the judge. The Appellant will need time to prepare for the appeal hearing and it would not have been possible for him to be ready today. This means that the appeal will have to be reheard on a future date in the First-tier Tribunal.

DECISION

There was a material error of law in the First-tier Tribunal's decision and reasons, which is set aside.

The original appeal must be reheard in the First-tier Tribunal, by any judge except First-tier Tribunal Judge Courtenay.

Signed

Dated 10 May 2018

Deputy Upper Tribunal Judge Manuell