



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11678/2016

THE IMMIGRATION ACTS

Heard at Manchester
On 31 July 2018
Given orally at hearing

Decision & Reasons Promulgated
On 6 September 2018

Before

THE HON. MR JUSTICE LANE, PRESIDENT

Between

BA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal, brought with permission granted by Designated Judge Shaerf on 4 July 2018, by the appellant, a citizen of Pakistan, to challenge the decision of the First-tier Tribunal which, following a hearing on 22 June 2017 dismissed the appellant's appeal against the refusal by the respondent of the appellant's protection claim. The appellant did not appear before First-tier Tribunal Judge Lloyd at Manchester Piccadilly on 22 June 2017. The judge considered and recorded that the appellant had been sent notice of the hearing for 22 June. The judge said:-

“I was satisfied that a letter dated 13 April 2017 sent to the Appellant at his address, the Appellant was informed that his appeal would be heard at Manchester Piccadilly on Thursday 22 June 2017 at 10am. There was no explanation for the Appellant’s absence. In the circumstances I exercised my discretion to hear and determine this appeal in the absence of the Appellant.”

2. If one looks at the Tribunal’s case file, however, matters are not that straightforward. Earlier in 2017, the appellant had been represented by a firm of solicitors; namely, Ashwood Solicitors. They had been in correspondence with the Tribunal and on 30 January 2017 informed it that the appellant was resident at an address in Hopkin Street, Manchester M12. The notice of hearing referred to by the judge, however, is addressed to the appellant at an address in Telford in Shropshire. No representative was served with notice of the hearing because Ashwood Solicitors had withdrawn their representation, it seems by that time. The address in Telford was a previous address of the appellant. It was not his most recent address, which was the address in Hopkin Street.
3. The First-tier Tribunal Judge therefore proceeded on a fundamental misconception of the position. Even if the First-tier Tribunal Judge can be excused for not being aware of the position, the fact is that the grounds of appeal drafted on 22 May 2018, seeking permission out-of-time to challenge the June 2017 decision, make it plain at paragraph 4 that the appellant had moved from Telford to an address in Manchester and at paragraph 5 we see reference made to the address in Hopkin Street.
4. In the circumstances, it is unfortunate that the First-tier Tribunal decided to grant permission to appeal on 4 June 2018, rather than using the review procedure under rule 35. Judge Shaerf was plainly aware of that procedure but he decided not to use it. He said that “on reflection” he had:

“... decided the more appropriate course will be to grant permission to appeal. At the error of law hearing the Appellant will need to produce evidence to substantiate the several claims made in the permission application that due to illness or change of address he did not receive notice of the hearing and when he received the Judge’s decision.”
5. Leaving aside the issue of illness, which related to an abortive hearing in March 2017 and which is not material, it is plain from the case file that the appellant was not served at his most recently notified address with notice of the hearing of 22 June 2017. That fact would have entitled Judge Shaerf, when considering the permission application, to review the decision under rule 35 and section 9 of the Tribunals, Courts and Enforcement Act 2007, instead of granting permission to appeal to the Tribunal. I say this, notwithstanding the issue of the timescale, to which Judge Shaerf made reference. In matters of this kind, where an appellant is not properly served with notice of a hearing and therefore, by extension, with the decision that followed that hearing, it is axiomatic that there will usually be a delay in the appellant becoming appraised of the position and, thus, seeking to challenge the decision.
6. In the circumstances, I have no alternative but to allow this appeal and remit it to the First-tier Tribunal for a fresh hearing on all matters. That is because the judge who

heard the case in June 2017 in the absence of the appellant made adverse findings of credibility in respect of the appellant's claims to be in need of international protection, both as regards the appellant's sexuality and as regards his political involvement in Pakistan.

7. The appeal is accordingly allowed.

Unless a court or tribunal directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant.

Signed

Date 2 September 2018

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber