



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

Appeal Number: DA/00182/2019 (P)

THE IMMIGRATION ACTS

**Determined without a hearing
under rule 34**

**Decision & Reasons Promulgated
17th June 2020**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

FRANCISCO CARVALHO

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant is a Portuguese citizen who appealed the respondent's decision dated 19 March 2019 to remove him on public policy grounds (an EEA deportation decision).
2. First-tier Tribunal Judge Beg ("the judge") dismissed the appeal in a decision promulgated on 30 December 2019. She proceeded to determine the appeal in the absence of any appearance by or on behalf of the appellant in the knowledge that he was on remand and had not been produced [28].
3. The appellant appealed the First-tier Tribunal decision asserting that the decision to proceed in his absence was procedurally unfair. In a Note and Directions sent on 07 April 2020 the President of the Upper Tribunal indicated that, subject to any objection, it was his preliminary view that the First-tier Tribunal decision involved the making of an error on a point

of law and the case should be remitted for a fresh hearing. In a rule 24 response dated 21 April 2020 the respondent agreed that the appellant did not have a fair hearing. The respondent has no objection to the appeal being remitted to the First-tier Tribunal for a fresh hearing.

4. I agree that it was procedurally unfair for the judge to proceed to determine the appeal in the appellant's absence in the knowledge that he was in custody and that it was beyond his control to attend the hearing. The First-tier Tribunal decision involved the making of an error of law and must be set aside. Having been denied the opportunity to present his case, it is appropriate to remit the appeal for a fresh hearing in the First-tier Tribunal.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The appeal is remitted to the First-tier Tribunal for a fresh hearing

Signed M. Canavan
Upper Tribunal Judge Canavan

Date 09 June 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. **A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**
6. **The date when the decision is "sent" is that appearing on the covering letter or covering email**