



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/10833/2019
(P)**

THE IMMIGRATION ACTS

**Decided under rule 34
On 17 August 2020**

**Decision & Reasons Promulgated
On 18 August 2020**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

**ABHISHEK BACHULAL LAL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: A. Hussain, Paul John & Co Solicitors

For the Respondent: A. Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is appealing against a decision of Judge of the First-tier Tribunal Abdar (“the judge”) promulgated on 9 January 2020 dismissing his human rights claim. Neither the appellant nor a representative on his behalf attended the hearing.
2. The single ground of appeal is that the notice of the hearing was not received. The appellant’s application is supported by a witness statement from his solicitor confirming this.

3. Permission to appeal was granted on 20 April 2020. On 9 June 2020 directions were issued by the Upper Tribunal expressing the preliminary view that the error of law issue in this appeal could be determined without a hearing.
4. On 15 June 2020 the respondent submitted a rule 24 response stating that if it is established that the appellant and his representatives did not receive a notice of hearing there has been procedural unfairness and the appeal should be remitted to the First-tier Tribunal.
5. It appears, from the file, that the notice of hearing was sent to the correct address. However, the fact that the notice was correctly sent does not mean that it was in fact received. The appellant's solicitor has provided a witness statement stating that the notice was not received. I have no reason to believe the appellant's solicitor is being untruthful (which would constitute very serious professional misconduct) and therefore I accept the evidence of the appellant's solicitor that the notice was not received. I agree with the respondent that in these circumstances, although no fault lies with the judge, it would be procedurally unfair for the decision to stand given that the appellant has not been able to participate, so far as practicable, fully in the proceedings: see rule 2(c) of the Tribunal Procedure (Upper Tribunal) Rules 2008.
6. As the appeal will need to be considered afresh with no findings preserved, having regard to para. 7.2(b) of the Practice Statements of the Immigration and Asylum Chambers of the First-tier Tribunal and Upper Tribunal, I have decided that the appeal should be remitted to the First-tier Tribunal.

Notice of Decision

- a. The appeal is allowed.
- b. The decision of the First-tier Tribunal is set aside and the appeal is remitted to the First-tier Tribunal to be heard afresh by a different judge.

Signed

D. Sheridan
Upper Tribunal Judge Sheridan

Dated: 17 August 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