



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber)
PA/12156/2019**

Appeal Number:

THE IMMIGRATION ACTS

Decision made

**Without a hearing
Pursuant to Rule 34**

**Decision & Reasons
Promulgated
On 06 May 2021**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

**PS
(ANONYMITY DIRECTION CONTINUED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Direction Regarding Anonymity - Rule 14 of the Tribunal
Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of the appellant's family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Appeal Number: PA/12156/2019

1. The appellant is appealing against a decision of Judge of the First-tier Tribunal Bagral promulgated on 27 November 2020 dismissing his protection and human rights claim.
2. The hearing before Judge Bagral proceeded in the appellant's absence. In paragraph 5 of the decision Judge Bagral stated that he was satisfied that the notice of hearing had been properly served on the appellant.
3. The grounds of appeal make a single argument, which is that it was procedurally unfair to proceed with the hearing as it was possible that the appellant did not have notice of it. The grounds state that the appellant's (former) representatives came off the record on 2 November 2020 (17 days before the hearing) and the appellant was not aware of the hearing date. The grounds acknowledge that the former representatives of the appellant stated that emails were sent to the appellant notifying him of the hearing date. With respect to this, it is stated in the grounds that the current representatives "are in the process of following this up with the appellant's previous representatives".
4. On 1 February 2021, permission to appeal was granted by Judge of the First-tier Tribunal Parkes. Judge Parkes stated that if the appellant was genuinely unaware through no fault of his own of the hearing date there might be procedural unfairness but that "considerably more information is required". Judge Parkes stated that confirmation was needed from the appellant's former representatives about what information they had been provided with.
5. On 8 February 2021 Upper Tribunal Judge Smith gave directions expressing the provisional view that it was appropriate to determine the question of whether Judge Bagral erred in law without a hearing. The parties were given directions in respect of making further submissions on the merits of the case and on whether a hearing would be necessary.
6. On 5 March 2021 the respondent submitted a brief response to the grounds of appeal stating that the appellant had not submitted the further information identified by the Judge Parkes granting permission and inviting the Upper Tribunal to uphold the decision of the First-tier Tribunal.
7. On 29 March 2021 Upper Tribunal Judge Canavan gave further directions. She noted that the appellant had not responded to Upper Tribunal Judge Smith's directions. She also noted that given the nature of the issue highlighted in the grounds of appeal it should be relatively straightforward for the appellant to produce evidence that might support his assertion that he did not receive the notice of the

hearing in the First-tier Tribunal in view of the fact that his current representatives say that they have been in contact with his former representatives. Judge Canavan's directions gave the appellant 7 days to respond. At paragraph 5 of her directions, she stated that in the event that there is a failure to comply the Upper Tribunal will consider whether, despite non-compliance, to proceed to determine the appeal in the absence of any response from the appellant or whether other action might be appropriate.

8. The appellant has not responded to the directions of either Upper Tribunal Judge Smith or Upper Tribunal Judge Canavan.

Decision to Decide Appeal without a Hearing

9. I have considered whether it is appropriate in this case to decide the appeal without a hearing pursuant to Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. I do not underestimate the benefits of an oral hearing, as set out in *The Joint Council for the Welfare of Immigrants v The President of the Upper Tribunal (Immigration And Asylum Chamber)* [2020] EWHC 3103. However, I am satisfied that a hearing is not necessary in this appeal because the appellant's case has no reasonable prospect of succeeding in the absence of the evidence referred to in Judge Canavan's directions (and in the grant of permission). As the appellant has failed to comply with Judge Canavan's directions (by either complying with Judge Smith's directions or applying for an extension of time) he would not be able to rely on the evidence necessary for his claim to have a prospect of succeeding at a hearing. In these circumstances, and noting that the appellant has not opposed Judge Smith's provisional view that the case can be determined without a hearing, I have decided to make a decision without a hearing.

The Decision

10. The appellant claims that he was not informed of the date of the hearing in the First-tier Tribunal before Judge Bagral. However, his representative who drafted the grounds of appeal states that the appellant's previous representatives maintain that emails were sent to the appellant to notify him of the hearing date. The grounds of appeal state that the current representatives are in the process of following this issue up with the previous representatives. Over 3 months have elapsed since the grounds were drafted but the appellant's representatives have still not provided the Upper Tribunal with any further information obtained from the previous solicitors. They have not done this despite (a) the grant of permission making clear how significant this information is; and (b) Judge Canavan, in her directions, emphasising the need for the appellant to produce evidence to support his assertion that he did not receive the notice of hearing.

11. Given that (a) according to the grounds of appeal, the appellant's former solicitors notified the appellant about the hearing date; and (b) no evidence has been submitted by the appellant despite over three months elapsing and it being made clear to the appellant (in both the grant of permission and Judge Canavan's directions) that such evidence was needed, I have no hesitation in finding that it is more likely than not that the appellant was informed by his previous solicitors (as they claim) of the hearing date and that he did not attend the hearing despite being informed of the date. It was not therefore procedurally unfair for Judge Bagral to proceed with the hearing.

12. The appeal is dismissed.

Signed

D. Sheridan
Upper Tribunal Judge Sheridan

Dated: 28 April 2021