



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

Appeal Number: PA/03741/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 28 June 2016**

**Decision &  
Promulgated  
On 5 July 2016**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE BLUM  
DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**MAHFUZUR RAHMAN  
(ANONYMITY DIRECTION NOT MADE)**

**and**

Appellant

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms A Tunde-Olowu, of Immigration Advice Service  
For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of Judge of the First-tier Tribunal Freer who, in a decision promulgated on 9 May 2016, dismissed the Appellant's appeal against the Respondent's decision of 30 March 2015 to refuse his asylum claim.

2. The appeal was dismissed without consideration of the substance of the Appellant's claim. Rule 19(4)(a) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 requires a Notice of Appeal to set out the Grounds of Appeal. The Appellant lodged his Notice of Appeal on 14 April 2016 but there were no grounds attached. On 20 April 2016 the First-tier Tribunal requested that the Grounds of Appeal be provided by 27 April 2016. When, on 06 May 2016, the judge, who was acting as Duty Judge, considered the application, no Grounds of Appeal were contained in the file.
3. The judge had regard to Rule 25 of the Tribunal Procedure (First-tier Tribunal) (Immigration & Asylum Chamber) Rules 2014. This enables the First-tier Tribunal to dispose of proceedings without holding a hearing if a party fails to comply with a provision of the rules or with a direction. The judge stated that there was no provision for a judicial decision without grounds, and that an appeal had to be resolved by a judicial hearing of the material evidence supporting the grounds. The interests of justice could not be served if the matter proceeded to a hearing in the absence of the Grounds and, as there was no explanation for their absence, the judge deemed it appropriate to dismiss the appeal without a hearing.
4. The Appellant sought permission from the First-tier Tribunal to appeal to the Upper Tribunal. The Appellant contended that he had sent the Grounds by recorded delivery to the First-tier Tribunal and that the First-tier Tribunal received those Grounds on 27 April 2015 and 08:16. In support of this assertion the Appellant provided a copy of the Grounds, a solicitor's covering letter dated 26 April 2016 addressed to the First-tier Tribunal and making reference to the Grounds, the solicitor's records of posting for 26 April 2016 and Royal Mail proof of delivery dated 27 April 2016. Permission was granted by the First-tier Tribunal in light of this evidence.
5. We indicated to the parties that the Tribunal file contained, *inter alia*, a covering letter from the Appellant's solicitors dated 26 April 2016 which referred to the Grounds of Appeal being enclosed, the Grounds of Appeal themselves, a Royal Mail 'track your item' printout indicating that an item with reference BZ481306032GB was delivered on 27 April 2016 at 08:16am, and a photocopy of the solicitor's outward dispatch book with a tab containing the same reference number positioned next to the First-tier Tribunal's address and the Appellant's name. Mr Tufan, who acted in a fair and pragmatic manner, accepted the cogency of the aforementioned evidence. He accepted that, if the Appellant had provided the Grounds to the First-tier Tribunal, the decision had been made in error and the Appellant had effectively been deprived of the opportunity of having his appeal substantively considered. In light of this evidence and the position adopted by the Presenting Officer we satisfied ourselves that, through

no fault of his own, the First-tier Tribunal Judge's decision was vitiated by a material error of law.

6. A mistake of fact can amount to an error of law (consider *E v SSHD* [2004] EWCA Civ 49; *MA (Fresh Evidence) Sri Lanka*\*[2004] UKIAT00161; *ML (Nigeria) v Secretary of State for the Home Department* [2013] EWCA Civ 844). In *E & R*, giving the judgment of the Court of Appeal Carnwath LJ stated (at paragraph 66):

In our view, the time has now come to accept that a mistake of fact giving rise to unfairness is a separate head of challenge in an appeal on a point of law, at least in those statutory contexts where the parties share an interest in cooperating to achieve the correct result. .... First, there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter. Secondly, the factual evidence must have been 'established', in the sense that it was uncontentious and objectively verifiable. Thirdly, the appellant (or his advisers) must not have been responsible for the mistake. Fourthly, the mistake must have played a material (not necessarily decisive) part in the Tribunal's reasoning.

7. We find that the Grounds of Appeal were received by the First-tier Tribunal on the morning of 27 April 2016. For some reason unknown to us the First-tier Tribunal administrative staff appear to have failed to attach the Grounds to the file. The judge believed there were no Grounds when in fact the Grounds had been provided to the First-tier Tribunal. The judge, quite innocently, made a mistake as to the availability of the Grounds. It is not in contention that the Grounds were sent. The Appellant's solicitors were not responsible for the mistake and the mistake clearly played a material, and in fact decisive part in the Tribunal's reasoning.
8. In these circumstances it is appropriate to remit the appeal back to the First-tier Tribunal for a full substantive hearing.

### **Notice of Decision**

**The First-tier Tribunal decision contains a material error of law.  
The matter is remitted back to the First-tier Tribunal for a full oral hearing.**



Signed

28 June 2016  
Date

Upper Tribunal Judge Blum

