



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

Appeal Number: HU/15703/2017

THE IMMIGRATION ACTS

Heard at Field House

On 21 November 2018

**Decision & Reasons
Promulgated**

On 18 December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**MR NAEEM UR REHMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Lourdes, Counsel instructed on a public access basis

For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Pakistan born on 23 June 1975. He arrived in the United Kingdom on 12 May 2007, with entry clearance as a student and subsequently extended his leave to remain, applying out of time for indefinite leave to remain and then varying that application to one based on long residence, on 4 May 2017. This application was refused in a decision dated 7 November 2017, the Appellant appealed against that decision and his appeal came before the First-tier Tribunal for hearing on 16 April 2018 when it was adjourned, apparently for the Presenting Officer

to file a Respondent's bundle and that an adjournment request was not opposed by the Appellant's representative. The hearing notice was sent out the following day, i.e. 17 April 2018, giving a new date for hearing of 10 August 2018 and this was sent to the Appellant's home address. However, on 10 August 2018 when the matter came before the First-tier Tribunal the Appellant did not appear and was not represented. On that basis the judge proceeded with his appeal and in a decision dated 11 September 2018 dismissed the appeal with reference to Article 8.

2. Permission to appeal to the Upper Tribunal was sought in time. It appears the grounds of appeal were drafted by the Appellant himself and they assert that he was never made aware of the hearing date scheduled to take place on 10 August 2018 and did not understand on what basis the Immigration Judge was satisfied that he was properly notified of the date of hearing. The Appellant asserted that he attended the hearing on 16 April 2018 and had compiled the Appellant's bundle and witness statement and that the Tribunal were aware that he had attended that hearing and his compliance in filing the appeal bundle, his attendance at the Tribunal and obtaining a representative on a direct access basis, all signified his willingness to attend an oral hearing in order for him to give evidence. The second ground of appeal asserted that the appellant did not concede that he did not meet the long residence requirements of the Rules.
3. Permission to appeal was granted by First-tier Tribunal Judge Birrell in a decision dated 4 October 2018, on the basis that the grounds disclose an arguable error of law.

Hearing

4. At the hearing before me, Mr Lourdes who had appeared also for the Appellant at the hearing on 16 April 2018, which had been adjourned, submitted simply that given that the Appellant had attended the Tribunal on 16 April it was credible that he had not received the notice of hearing in respect of the hearing on 10 August because if he had received it he surely would have attended in order to put forward his case and give oral evidence to the judge.
5. In her submissions Ms Everett acknowledged the rationale that the Appellant had attended previously and that that supported his version of events that simply he did not receive the hearing notice.

Decision and Reasons

6. I find a material error of law in the decision of First-tier Tribunal Judge Boyes. Whilst it is apparent from the Tribunal file that a hearing notice was sent to the Appellant on 17 April 2018 and was sent to the address at which he continues to reside and the judge at [3] was properly entitled to take this into account, I find that the judge arguably fell into error at [3] in finding that it was in the interests of justice to proceed, given that it was

clear from the file that there had been a previous hearing which the Appellant had attended on 16 April 2018 and he had also been represented at that time. Therefore, given the lack of opposition by Ms Everett to the appeal and in light of the maladministration that occurred, I find that there has been procedural unfairness on the particular facts of this case.

7. In respect of the issue of whether or not the Appellant can meet the requirements of paragraph 276B of the Rules, read with the Home Office guidance then in force, i.e. the long residence guidance published on 24 November 2016, the judge's finding at [7] that the Appellant does not appear to dispute this, is not sustained by the content of his witness statement where the Appellant appears to be continuing to prosecute his appeal on the basis that he does meet the long residence requirements: see [12] through to [17] of that statement.
8. In these circumstances, the only fair course of action is to remit the appeal for a hearing *de novo* before the First-tier Tribunal. Given that the Appellant resides in Slough it would seem more appropriate for his appeal to be transferred to the Hatton Cross Hearing Centre rather than to Newport and I so direct. No anonymity direction is made.

Notice of decision

9. I find material errors of law in the decision of the First tier Tribunal Judge Boyes. I remit the appeal for a hearing *de novo* before the First tier Tribunal at Hatton Cross.

Signed Rebecca Chapman

Date 7.12.18

Deputy Upper Tribunal Judge Chapman