



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

Appeal Number: PA/12166/2019

THE IMMIGRATION ACTS

**Heard remotely by Skype for Business
On 17 March 2021**

**Decision & Reasons
Promulgated
On 23 March 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

MM

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holt

For the Respondent: Mr McVeety , Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Pakistan who was born in 1985, appealed to the First-tier Tribunal against a decision of the Secretary of State refusing his claim for international protection. The First-tier Tribunal, in a decision promulgated on 25 September 2020, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. At the initial hearing in the Upper Tribunal the representatives for both parties acknowledged that the judge had erred in law. I told the representatives that I intended to set aside the decision. I shall now briefly give my reasons.
3. Neither the appellant nor his representative attended the face to face hearing in the First-tier Tribunal on 16 September 2020. The solicitors were contacted on the day by the court staff and responded that they had not received a notice of hearing. The judge gives reasons at [3] for rejecting that claim. He also observed [4] that the appellant had not been served with notice of hearing. At [5-6], he gave his reasons for proceeding with the hearing. Those reasons address only the fact that the solicitors had not sought an adjournment and noted that the 'pressure on court time [is] possibility higher than ever.' The judge has not considered whether refraining from adjourning the hearing was fair or unfair to the appellant. The assumption appears to be that the solicitors could or should have notified the appellant of the date of the hearing but the judge makes no clear finding to that effect. Given that the solicitors claimed not to know of the hearing and that the judge was aware that the appellant had not separately been served with notice of hearing, the judge's failure to consider whether by proceeding he was treating the appellant fairly amounts to an error of law. I do not say that the judge could not have proceeded with the hearing fairly in the circumstances; the problem is that he did not even address the question of fairness to the appellant before deciding to go ahead.
4. In the circumstances, I set aside the decision. There will need to be a hearing *de novo* which is better conducted in the First-tier Tribunal to which this appeal is returned for it to remake the decision.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo* (**Not Judge Ficklin; Manchester Hearing Centre; First-tier Tribunal to decide if face to face or remote; 1.5 hours; Urdu interpreter; no agreed date so list on first available date**).

Signed

Date 17 March 2021

Upper Tribunal Judge Lane

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

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