



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003247
First-tier Tribunal Nos: HU/56757/2022
IA/09649/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MUHAMMAD RIZWAN
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Present as a litigant in person
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Heard at Field House on 28 September 2023

DECISION AND REASONS

1. The Appellant is a national of Pakistan born on 7 November 1978. He arrived in the UK on either 23 June or 13 July 2005 in possession of a valid visit visa and subsequently overstayed. He made a number of applications, none of which were successful, most recently on 20 September 2021 on the basis of his private life in the UK. This application was refused on 14 September 2022 on the basis that the Secretary of State did not accept that the Appellant had been continuously resident in the UK since 2005.
2. The Appellant appealed against that decision and his appeal came before First-tier Tribunal Judge Aziz for hearing on 5 April 2023. The Appellant appeared unrepresented at his appeal hearing, however, he asserted that he was unaware that his representative was not intending to attend the Tribunal. He also confirmed twice that he was content to proceed, see [6] of the Judge's decision and reasons. His appeal was dismissed in a decision dated 6 April 2023.
3. The Appellant sought permission to appeal out of time on 28 April 2023 stating that he had only received the determination on 25 April 2023 due to postal strikes and delay.

4. The grounds of appeal asserted: firstly, that the judge did not fully listen to the point he was trying to make about his former girlfriend and her family being after him and he asserted he had told his lawyers about this; secondly, that he had been let down by his lawyers and he attached proof of receipts for payment that he had made to his former solicitors; thirdly, that they had not included half of the papers that he had given them to prove his residence in the UK since 2005; fourthly, that he was seeking advice as to how to make a complaint about them to the Solicitors' Regulation Authority and/or the Legal Ombudsman, and fifthly, that he only agreed to go ahead with his appeal on the basis that if he did not agree, his appeal would be automatically dismissed and he did not understand that he could ask to adjourn his appeal in order to seek alternative legal representation.
5. Permission to appeal was granted on 22 June 2023 by First-tier Tribunal Judge Seelhoff in the following terms:
 - “2. *The first ground is that the judge failed to listen to the Appellant's concerns related to risk from a former girlfriend's family in Pakistan.*
 3. *The judge properly directed themselves that the Secretary of State's consent would be needed to address that issue and that the consent was not given.*
 4. *The grounds further assert that the Judge essentially acted unfairly in proceeding with the hearing once the Appellant was informed on the day of the hearing that his representatives would not be attending due to unpaid fees which he states he was unaware of. He makes further complaints about the firm failing to serve documents he had given them.*
 5. *It is arguable that the Appellant felt under pressure to proceed with the appeal on the day of the hearing and that proceeding on the day was in fact unfair.*
 6. *Permission to appeal is granted on all grounds.*
 7. *The Upper Tribunal will likely need to be provided with copies of any formal complaints raised against the Appellant's previous representatives and any further correspondence associated with those complaints from those representatives, the Legal Ombudsman or the SRA. The Appellant should be aware that in the absence of such evidence an Upper Tribunal judge may not be satisfied that the allegations against the previous representative are true”.*
6. The Secretary of State submitted a Rule 24 response opposing the appeal on the basis that the Appellant had made no application to adjourn and confirmed that he was content to proceed so it was difficult for the Appellant to make a convincing argument that he was deprived of the right to a fair hearing.

Hearing

7. At the hearing before the Upper Tribunal, Mr Walker was not in receipt of any of the relevant papers, so copies were provided and he was given time to consider them. Mr Walker accepted that the Appellant was disadvantaged at his appeal hearing. He had been asked by the judge if he wanted to proceed and he said yes, but this was unfair because as a layman he would not be aware that because his solicitor did not turn up that he could ask for an adjournment and that the hearing could be put off to another time. Therefore he has not had a fair hearing and he would benefit from representation.

8. The Appellant was present in court and assisted by an Urdu interpreter, therefore the course of events was explained to him and he was also informed that he needed to take responsibility for his own case and either on the next occasion to employ a new representative or to represent himself, but in any event that his appeal would need to go ahead. If he wished to raise a new matter that he needed to do that now by informing the Secretary of State of the substance of that new matter.

Notice of Decision

9. In light of Mr Walker's helpful concession, I find a material error of law in the decision of First-tier Tribunal Judge Aziz. I set that decision aside and I remit the appeal for a hearing *de novo* before the First-tier Tribunal sitting in Birmingham. The First tier Tribunal Judge hearing that appeal should note that the Appellant has been advised that his appeal is expected to proceed on the next occasion whether or not he has obtained legal representation.

Rebecca Chapman

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 October 2023