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Heard at Field House

FK(Reply to Directions - Time Limits) Afghanistan [2004] UKIAT 00043

On 2 March 2004

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

11 March 2004

Given orally in court

Before :

Mr J Barnes (Chairman)
Mr P R Lane
Mr M Taylor

Between

APPELLANT

and

The Secretary of State for the Home Department

RESPONDENT

Representation

For the appellant: Ms R Baruah, Counsel instructed by White Ryland

For the respondent: Ms A Holmes, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Afghanistan who claims to have been born on 9 January 1986 and who arrived in the United Kingdom on 27 September 2002, claiming asylum on the day of his arrival. Beyond a screening form there was no knowledge on the part of the Secretary of State until after his decision of the basis on which the appellant made that claim. It was refused for the reasons set out in a letter dated 8 May

2003 and on 13 May 2003 the Secretary of State issued notice of his decision to remove the appellant to Afghanistan as an illegal entrant. The appellant appealed against the decision on both asylum and human rights grounds.

2. On 9 July 2003 the Immigration Appellate Authority issued notice to the appellant and to his solicitors of the first hearing and full hearing which stated that the first hearing would take place on 29 July 2003, followed by a full hearing on 11 September 2003 provided that either the appellant or his representatives returned the form of Reply to directions to the Authority before Friday 18 July 2003 or that he or they attended at the first hearing. The notice specifically stated that failure to attend the first hearing without a satisfactory explanation or to return the Reply to directions would lead to a determination of the appeal in the appellant's absence at the first hearing.

3. What in fact happened was that the appellant's solicitors neglected to comply with the direction in relation to the filing of the Reply timeously. They did not send it to the Authority until 25 July, only a day or so prior to the hearing, and in consequence it did not reach the file so that the Adjudicator was unaware of it. It is right to say, however, that there is a claim made by the solicitor who has the conduct of this appeal on behalf of the appellant that on 28 July the Authority itself telephoned and spoke to her when she confirmed that copies of the reply had been sent by facsimile as stated above and was told that this information would be linked with the file, as well as a note that the appellant was ready to proceed. Had it not been for that telephone conversation the appellant would have been in some considerable difficulties before us because the Adjudicator at the first hearing, in the absence of any knowledge of the submission of the Reply form duly completed or of any appearance before him, dismissed the appeal without consideration of its merits. The appeal to this Tribunal arises from that decision of the Adjudicator, Mr J R A Hanratty.

4. Ms Holmes for the Secretary of State very fairly said that she did not wish to see the appellant himself disadvantaged but that it was a matter of considerable concern to her that failures on the part of the appellant's solicitors to comply with clear directions which had been issued had resulted in the necessity of an appeal to this Tribunal and the consequent waste of time and expense. We agree fully with that sentiment. It is compounded to our mind by the terms of the grounds of appeal which, at paragraph 3, say:

> "… However, it is a well-established practice that the Immigration Appellate Authority accepts the completed notice of hearing after that date so long as it is sent in time to link to the file. In practice this has included replies sent the day before and also the morning of the first hearing in the case when the first hearing is listed for the afternoon."

We make it clear that those grounds of appeal were not settled by counsel but by the solicitor concerned. They show to our mind a most regrettable approach on the part of the solicitors to their duties both to their client and to the Immigration Appellate Authority. If there is any general belief that time limits can simply be ignored in the way that they assert, then that is a belief that we should correct by this determination. It may be that if an out-of-time Reply comes to the attention of an Adjudicator he or she may be prepared to take its receipt into account: but representatives cannot rely on such a course being followed and it is their duty to their client to attend in person in such circumstances. It is wholly improper for representatives of asylum applicants to rely on the goodwill of the Immigration Appellate Authority and to ignore clear directions which are issued for the purposes of ensuring that matters are dealt with as quickly as possible, which is a vital consideration in the administration of the asylum appeal process. Appellants' representatives must take due notice of Rule 44(1) of the Immigration and Asylum Appeals (Procedure) Rules 2003 which requires that an Adjudicator must hear an appeal in the absence of a party or his representative if satisfied that due notice of the hearing has been served and he has received no satisfactory explanation for his absence. Where there is sufficient evidence before the Adjudicator to enable him to determine the appeal, an unsuccessful Appellant may face real difficulty in obtaining permission to appeal against a decision reached in the absence of an Appellant who or whose representatives have neglected to comply with directions issued to him.

5. Having failed to submit the Reply timeously it was the duty of the representatives to attend at the first hearing or to ensure that the appellant did so. There can be no criticism whatsoever of the Adjudicator for having taken the view that on the basis of those directions the proper course was for the appeal to be determined in the absence of the appellant. It may be, as there was some material relevant to the appellant's case disclosed in the grounds of appeal, that it would have been better had he dealt with it substantively on the basis of the evidence before him following the advice of the Tribunal in *Mohamed* (01/TH/1233) but that does not

affect in any way the fact that it was his duty to determine the appeal at the first hearing in view of the blatant failure to comply with the directions which had been issued.

6. On behalf of the appellant's representatives, Ms Baruah has said to us that they carry out a heavy workload of asylum and immigration appeals and that this is very much an exception to the way in which they would normally handle such matters. We trust that that is so and that they will take the view that no part of the cost of these proceedings before us should fall either upon the public purse or upon the appellant personally. Nevertheless, we are satisfied that in the interests of justice it is appropriate to remit this appeal for hearing afresh. We accept that it is not the fault of the appellant and it does not appear to us on the full documentation which has now been submitted that his claim can be categorised as unarguable. Since there has been no consideration at all of the merits to date, that is a task which remains to be done.

7. For the above reasons this appeal is allowed to the extent that it is remitted for hearing afresh before an Adjudicator other than Mr J R A Hanratty.

8. This determination is being reported in order to draw the attention of immigration and asylum practitioners to what we have said in paragraphs 4 and 5 above.

J Barnes
Vice President