



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

Appeal Number: PA/03789/2017

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 8 November 2018**

**Decision & Reasons**

**Promulgated**

**On 28 November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**[M S]**

**(~~ANONYMITY DIRECTION NOT MADE~~)**

**and**

Appellant

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

Respondent

**Representation:**

For the Appellant: Mr J Dhanji, Counsel, SMA Solicitors

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

**DECISION ON ERROR OF LAW**

1. The appellant is a citizen of Afghanistan born on 2 March 1988. He appeals against the decision of First-tier Tribunal Judge Nicholls dismissing his appeal against the respondent's refusal dated 12 April 2017 to grant him asylum and humanitarian protection in the United Kingdom.
2. The judge decided the appeal on 10 August 2018 in the absence of the appellant. The appellant alleges that he did not receive the notice of hearing issued on 17 July 2018 and has made a statement to that effect. The grant of permission stated that if this is found to be true, then it is arguable that the appellant has been denied a fair hearing. In reaching

this decision First-tier Tribunal Judge McCarthy took into consideration the fact that the appellant has sought to defend his case previously before the First-tier and Upper Tribunals and his failure to attend the hearing on 10 August 2018 was out of character, particularly as he had only recently succeeded in the Upper Tribunal.

3. Mr Dhanji submitted that prior to the hearing, the appellant's solicitors had come off record on 17 June 2018. It is therefore probable that they would not have had a contact number for the appellant. He accepted that the notice of hearing was sent to the appellant's known address, that is [~], London. The appellant said in court that he moved to this address four years ago. He maintained that he did not receive the notice of hearing.
4. Mr Dhanji repeated what was in the grounds of appeal that the appellant had appeared before the First-tier Tribunal at a hearing on 29 June 2017. He said the appellant has throughout the last two years participated in the various hearings before the First-tier Tribunal and the Upper Tribunal. Therefore, not appearing at the hearing before First-tier Tribunal Nicholls was out of character.
5. Ms Fijiwala submitted that there was no procedural unfairness in the judge proceeding to hear the appeal in the absence of the appellant. She said that the judge had said that when the appellant did not attend the hearing, a Tribunal clerk telephoned the appellant's former representatives to ask if they held any contact telephone number for the appellant. The clerk was informed that they did not. It was not possible, therefore for the Tribunal staff to seek to contact the appellant directly.
6. I accept that the judge verified the appellant's contact details and was satisfied that the notice of hearing had been validly served. Nevertheless, I accept Mr Dhanji's submission that as the appellant's solicitors had come off record on 17 June, prior to the hearing on 10 August 2018, it is probable that they would not have had a contact number for the appellant.
7. I accept that the appellant's failure to attend the hearing was out of character in the light of the fact that the appellant has sought to defend his case at various hearings in the last two years.
8. Accordingly, I find that the appellant has been denied a fair hearing.
9. I find that the judge's decision cannot stand. It is set aside in order to be remade.
10. The appellant's appeal is remitted to Taylor House for rehearing by a judge other than First-tier Tribunal Judge Nicholls.
11. No anonymity direction is made.

Signed

Date: 22 November 2018

Deputy Upper Tribunal Judge Eshun