



**UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER**  
EA/01446/2020

Appeal No.

**THE IMMIGRATION ACTS**

Heard at: Field House  
On: 2 August 2021

Decision Promulgated  
On 20 August 2021

Before

**Upper Tribunal Judge Pitt**

Between

**Jakin Shpani**

Appellant

and

**Secretary of State for the Home Department**

Respondent

**DECISION AND DIRECTION**

1. The Tribunal issued a preliminary decision dated 27 July 2021 indicating that the determination of the First-tier Tribunal contained a procedural error as set out in the grounds of appeal and that the preliminary view of the Tribunal was that a finding of error of law, set aside and remittal to the First-tier Tribunal was the correct disposal of the appeal.
2. That preliminary decision stated as follows:  
"The appellant's appeal was decided on the papers by First-tier Tribunal O'Brien in a decision dated 6 October 2020. The judge found that the appellant had not provided grounds of appeal and dismissed

the appeal without any substantive consideration.

1. The appellant appealed the decision of the First-tier Tribunal but permission was refused by the First-tier Tribunal on 25 November 2020. The appellant appealed to the Upper Tribunal and was granted permission on 19 March 2021.
  2. The correspondence on the Tribunal file contains a copy of a fax cover sheet dated 3 February 2020 showing a fax sent by the appellant to the First-tier Tribunal with 4 attachments including "Refusal Letter", "Appeal Form" and "Grounds of Appeal". That suggests that the appellant did provide substantive grounds of appeal to the First-tier Tribunal as he asserts in his grounds of appeal.
  3. Further, the correspondence on the Tribunal file contains emails dated 26 February 2020 and 27 March 2020 from the appellant to the First-tier Tribunal in response to a request for the grounds. The emails set out that the grounds were sent with the original appeal and indicated that they were, in any event, being provided again. Both emails show an attachment entitled "Grounds of Appeal" with the same reference number as the "Grounds of Appeal" shown as being sent on 3 February 2020. These documents also suggest strongly that the appellant did provide substantive grounds of appeal to the First-tier Tribunal, both in time with the appeal form on 3 February 2020 and on two further occasions.
  4. Further, the appeal bundle dated 12 August 2020 prepared by the First-tier Tribunal for the appellant's appeal includes appeal form IAFT-5 dated 3 February 2020 and substantive grounds of appeal comprising 6 pages. The fact of this bundle having been prepared by 12 August 2020 suggests strongly, as asserted by the appellant in the grounds of appeal, that he did provide substantive grounds of appeal to the First-tier Tribunal and that the First-tier Tribunal Judge erred in finding otherwise.
  5. In light of those documents, the Upper Tribunal has reached a preliminary view that the decision of the First-tier Tribunal discloses a procedural error because a mistake was made as to substantive grounds not having been provided and procedural unfairness arising from the appeal being dismissed without substantive consideration and without the hearing which had been requested by the appellant.
  6. The Upper Tribunal is also of the view that this procedural error is such that an error of law should be found, the decision of the First-tier Tribunal set aside and the appeal remitted to the First-tier Tribunal for substantive consideration.
  7. Any party opposed to this disposal is directed to inform the Tribunal in writing (giving reasons), **not later than midday on Friday 30 July 2021**. If there is no response, the Tribunal will take that as deemed consent to the disposal set out above and the hearing listed for 2 August 2021 will be vacated."
3. The respondent indicated on 29 July 2021 that she was in agreement with the preliminary decision.

4. I therefore allow the appeal where the decision of the First-tier Tribunal contained an error of law in the terms set out above. The decision of the First-tier Tribunal is set aside. It will be remitted to the First-tier Tribunal to be re-made.

#### DECISION

5. The decision of the First-tier Tribunal contains an error on a point of law and is set aside.
6. The appeal will be re-made by the First-tier Tribunal.

Signed: S Pitt

Date: 2 August 2021

Upper Tribunal Judge Pitt