



TC02405

Appeal number: TC/2012/05561

TYPE OF TAX –application for permission to make a late appeal for a review of the UK Border Agency decision to refuse to restore a ceremonial sword which had been seized by them- application granted on grounds application made in time but not properly and specifically addressed due to appellant’s lack of English

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MR PIOTR KACZNAREK

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE SANDY RADFORD
IAN PERRY**

Sitting in public at Bristol on 17 August 2012

The Appellant in person

Ms D Riley, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

5 1. This is an appeal by the appellant to be allowed to make a late request for a review of UKBA's decision to refuse to restore his ceremonial sword.

2. The appellant claimed to have made the request within the time limit but UKBA appeared not to have received the letter.

Background and Facts

10 3. The appellant is Polish and although he represented himself his command of English was poor and it was obvious to the Tribunal that he did not understand much of what was said.

15 4. The sword in question was presented to him by his Catholic church in Poland in lieu of his twenty years in the church. This was a tradition which went back to 1880. At the time of the presentation he had already left to live in England so his wife received it on a visit to Poland. She arranged for the sword to be sent to him in England by private vehicle.

5. On 21 July 2011 the package was seized by the UKBA at Coquelles and a notice of the seizure dated 22 July 2011 was sent to the appellant.

20 6. The appellant wrote to UKBA and explained that the sword was for ornamental use only and asked that it be returned to Poland as it was of great sentimental importance to him. The letter was stamped received on 4 November 2011.

25 7. UKBA acknowledged the letter on 11 November 2011 indicating a decision might take 4-8 weeks. On 23 November 2011 UKBA replied that it had concluded that there were no exceptional circumstances and had therefore decided that the sword would not be restored. However if the appellant did not accept the decision he could request a statutory review within 45 days of the date of their letter.

30 8. The appellant confirmed to the Tribunal that he had immediately replied to this letter and produced his reply. Unfortunately the letter was undated but the Tribunal believed the appellant's statement that he had sent an immediate reply. The correct department of the UKBA unfortunately did not appear to have received this letter which was undated and had no reference displayed.

9. As the appellant received no reply to this letter he wrote again to UKBA enquiring as to the lack of reply which he had initially put down to it having been sent over the Christmas period. UKBA received this letter on 7 March 2012.

35 10. UKBA replied on 8 March 2012 that as the request for the review had been received late the letter would be forwarded to a review officer who would decide what further action was to be taken. In the meantime if the appellant had a

reasonable excuse for his late request he should send evidence of this within 14 days.

5 11. The appellant replied to UKBA stating that he had replied to the first letter immediately but as he had received no reply he had written to them again in March. This letter was stamped as received on 26 March 2012.

12. UKBA refused the appellant's request for a late review on the grounds that the appellant had no reasonable excuse for the request being late.

13. The appellant contested this decision and appealed to the Tribunal.

10 14. The appellant confirmed that as he was largely unable to understand the letters he had turned to a friend with a better command of English who had helped him understand the letters from UKBA and to reply to them.

UKBA's submissions

15 15. Ms Riley produced a bundle of documents to which she referred. She submitted that the appellant had not replied to UKBA's decision in time for the decision to be reviewed.

16. She submitted that in all probability the sword had already been destroyed.

17. She submitted that from the bundle of documents she had produced it could be seen that the appellant had missed the deadline to request a review.

20 18. She submitted that the appellant had no reasonable excuse for the request being late, that UKBA therefore opposed the request for a late review and the appeal should therefore be dismissed.

Appellant's Submissions

25 19. The appellant produced his own bundle of documents from which it could be seen that there were letters missing from UKBA's bundle. He submitted that he had sent his request in time.

20. He submitted that all his letters had been sent by first class post.

21. He submitted that the sword was extremely important to him and the tradition of giving the sword went back for 132 years.

30 22. He submitted that he had not known that it was forbidden to send the sword to the UK but that he had offered to pay for the sword to be returned to Poland.

23. He submitted that one of the reasons he had not realised that there would be a problem was that such swords were frequently sold at markets and car boot sales.

24. The appellant submitted that it had been necessary each time he received a communication from UKBA for him to find another Polish person with a better

command of English to translate it for him so that he could with their help ensure that he understood the letters and replied to them all in good time.

5 25. The appellant reiterated that although he now accepted that the sword could not be imported to him in the UK he was fully prepared to pay for its postage to be returned to a relative in Poland so that he did not completely lose what was to him a most important acknowledgement from the church of his long service to it.

Findings

10 26. We found the appellant honest and sincere but with a very poor command of English. As a result of this and the fact that he was unrepresented, in the interests of fairness and justice the Tribunal tried to assist him as much as we could.

15 27. We found that the sword was of extreme importance to him and therefore accepted that he would not have missed the deadline for making the request for a review of the decision. We accepted therefore that the appellant had made a request for a review of the UKBA's decision not to restore the sword within 45 days of 23 November 2011.

20 28. We found this was confirmed by his second letter in which he stated that he had assumed that the lack of reply from UKBA was because of the Christmas holidays. However as a result of his lack of experience in dealing with official letters and his poor knowledge of English we found that the original letter was not properly addressed.

29. We examined the copies of all the letters he had written and found that not all of them appeared to have been received by UKBA probably because they were undated without a reference.

25 30. We found therefore that the appellant did have a reasonable excuse for the apparent late request but we recommend most strongly to the appellant that in future he seek help more professional help in dealing with any official letters.

Decision

30 31. Mindful of Rule 2 (1) of the Tribunal Procedure (First – tier Tribunal) (Tax Chamber) Rules 2009 that the overriding objective is that cases should be dealt with fairly and justly we decided to allow the appellant's late request to UKBA for a review of their decision not to restore the sword or return it to Poland at the appellant's expense.

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5 32. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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SANDY RADFORD

TRIBUNAL JUDGE

RELEASE DATE: 20 September 2012

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