Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00737/2012

THE IMMIGRATION ACTS

Heard at Manchester
On 1 November 2013

Determination Promulgated
On 25 November 2013

Before

The Hon. Mr Justice McCloskey, President UT (IAC)
Upper Tribunal Judge Southern

Between

SALH RAHIM TWANA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J. Stull, of Lloyds Solicitors
For the Respondent: Mr A. McVeety, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant, who is a citizen of Iraq born on 6 May 1980, has been granted permission to appeal against the decision of First-tier Judge Lever, sitting with a non-legal member of that Tribunal who, by a determination promulgated on 6 June 2013, dismissed his appeal against the respondent's decision to refuse to revoke a deportation order made as a consequence of his having committed criminal offences including wounding, such offending being during the currency

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of a suspended sentence of imprisonment imposed for an earlier offence offences of a not dissimilar nature.

2. In granting permission to appeal, Upper Tribunal Judge Allen made unambiguously clear that he had been persuaded to do so on one narrow point, advanced in the grounds. Indeed, he extended time so as to admit this out of time application because a serious oversight had been alleged on the part of the judge:

> "… I am concerned by the fact that in the grounds it is said that the appellant's brother gave testimony in court and said there was regular contact between the appellant's child and the appellant, whereas there is no indication from the judge's determination that the brother gave evidence and, indeed, it is said at paragraph 37 of the determination that he did not give evidence. Bearing in mind the significance of the best interests of the child it is important that the matter be clarified. The judge and the Presenting Officer will be asked to provide their record of proceedings."

3. Directions were issued to that effect which established that which the appellant knew all along to be the case which was that the assertion made in the grounds was simply untrue. The appellant's brother had not given evidence, either orally or in the form of a witness statement.

4. The appellant had been unrepresented at that hearing and so the grounds for permission to appeal to the Upper Tribunal, prepared by his representatives instructed after that hearing, were based upon instructions received from him.

5. Therefore, the only basis upon which permission to appeal was granted has now fallen away, it being confirmed by Ms Stull in her skeleton argument, prepared for this hearing, that the appellant's assertion that his brother had given evidence at the hearing before the First-tier Tribunal was "factually incorrect". That means that the judge made no error in not referring in the determination to evidence that was not given before him.

6. That being the case, there is nothing left within the scope of the grant of permission to appeal to argue and so we dismiss the appeal and direct that the determination of the First-tier Tribunal is to stand.

7. We should, however, add this. In her skeleton argument Ms Stull seeks to raise fresh challenges to the fairness of the hearing, based again upon the appellant's instructions as to what occurred at the hearing before the First-tier Tribunal. She complains that:

> "[The] Appellant did have witnesses that could have testified as to the relationship between appellant and his son but was not allowed to call them as witnesses."

Again, this allegation by the appellant of unfairness in the hearing and determination of his appeal is simply untrue. It is plain from the record of proceedings of both the First-tier Tribunal Judge and the Presenting

Officer that the judge asked the appellant, at the very beginning of the hearing, whether he wished to call any witnesses and he said that he did not. The note of the Presenting Officer, produced for examination at the hearing before us, records this as follows:

> Judge: Calling any witnesses? People at the back not witnesses?
>
> Appellant: Give evidence myself only – no witnesses…

8. Further, this fresh allegation of unfairness emerges for the first time in the skeleton argument. No mention of this was made either in the handwritten grounds of the appellant in his application for permission to appeal submitted by him to the First-tier Tribunal or in the grounds in support of the renewed application to the Upper Tribunal, those grounds running to six closely typed paged and being prepared by the appellant's solicitors. In our judgment it is inconceivable that had there been any truth at all in the complaint that the judge prohibited the appellant from calling a number of witnesses he would have mentioned that before.

9. The skeleton argument complains also that the appellant was unrepresented and so ill-prepared to present his case. But the judge dealt with that carefully at paragraph 8 of his determination, explaining that the appellant had ample time to arrange for legal representation. He had instructed other solicitors to act on his behalf in previously. Those solicitors withdrew in February, some three months or so before the substantive hearing, explaining that they had been unable to obtain adequate instructions from the appellant. It is unambiguously clear that the judge was entitled to proceed with the hearing even though the appellant was unrepresented.

10. For those reasons we are satisfied that not only are the fresh complaints about unfairness in the proceedings beyond the scope of the permission granted, they are, in any event, wholly unarguable and should not have been raised.

<u>Summary of decision:</u>

11. The judge made no error of law. Therefore the appeal to the Upper Tribunal is dismissed.

Signed

Upper Tribunal Judge Southern

Date