Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: HX/47710/2003

THE IMMIGRATION ACTS

No hearing	**Promulgated on**
21 November 2014	**3 December 2014**

Before

MR C M G OCKELTON, VICE PRESIDENT

Between

BARHAM KAMAL AHMED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. This appeal has a very long history. The appellant, a national of Iraq, claims to have entered the United Kingdom on 27 May 1999. He was served with illegal entry papers. He appears to have claimed asylum. He was issued with a self-completion form on 19 October 2001. It was to be returned within a week, but so far as we are aware, it never has been returned. His asylum claim was in due course refused for non-compliance.

2. He was arrested early in 2002 on a charge of rape. He was sentenced, apparently in July 2002, to fourteen months imprisonment for indecent assault for which he served half. He appealed against the refusal of

asylum. By the time the matter first came before an Immigration Adjudicator on 19 December 2003, he had already had the services of three different immigration solicitors and the Immigration Advisory Service. But on that occasion he appeared unrepresented and sought an adjournment. The adjournment was granted, with directions that the appellant be ready to present his case in full, and that all evidence of the claim, including any witness statement, was to be filed seven days before the hearing.

3. The hearing was on 3 November 2003, before Immigration Adjudicator Mr Palmer. The appellant again appeared unrepresented. There had been no compliance with the directions; Mr Palmer considered that there was no reasonable excuse. Nevertheless, as is apparent from his determination, Mr Palmer gave the appellant an open opportunity to say anything he wanted to say in support of his claim. He is not, however, recorded as having said anything that could establish it. Mr Palmer dismissed his appeal.

4. The appellant then, still acting in person, applied for permission to appeal to the Immigration Appeal Tribunal. The grounds are recorded as indicating that "the claimant insists that he fears being returned to Iraq". The Tribunal's decision was made by Ms Gill, a Vice President, who indicated in the text of her decision that permission was granted, because of the lack of reasons behind the Adjudicator's indication that he considered that the appellant lacked credibility. Despite giving a reason for granting permission, however, she gave her decision as "permission to appeal is refused". Her decision went out on 9 February 2004 under cover of a letter indicating that permission to appeal had been refused.

5. Nothing appears to have happened in the next nine years. A letter from the appellant's most recent solicitors indicated that they were instructed in February 2013, and by March 2014 regarded themselves as well enough informed to tell this Tribunal what the problem was. I arranged for the matter to be listed for mention before the Tribunal, constituted with myself and Upper Tribunal Judge Deans on 18 July 2014.

6. That was the occasion for determining the present status of these proceedings. The appellant was now represented by Latta & Co. Mrs O'Brien, who appeared for the respondent, did not object to our treating Ms Gill's decision as though it had been a grant of permission to appeal.

7. In those circumstances it was necessary to consider whether the matter was before the Upper Tribunal, and if so, what the Tribunal's task was. Without, it is fair to say, very much assistance from the parties, we were able to reach a view on which there is no room for doubt. We arrive at the same position, whether Ms Gill's decision is regarded as having always been a grant of permission to appeal to the Immigration Appeal Tribunal, or is regarded as having become a grant of permission to appeal only on our decision that it would be so treated.

(a) If permission to appeal to the Immigration Appeal Tribunal was granted in early 2004, then on the abolition of the Immigration Appeal Tribunal on 4 April 2005, there was an appeal pending before that Tribunal. By art 4(b) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (commencement No. 5 and Transitional Provisions) Order 2005 (SI 565/2005), the appeal continued after that date as an appeal to the Asylum and Immigration Tribunal, and by art 5(2) of that Order, the Asylum and Immigration Tribunal was to deal with the appeal in the same manner as if it had originally decided the appeal and was reconsidering its decision. On the abolition of the Asylum and Immigration Tribunal on 15 February 2010, and the transfer of its functions to this Tribunal, no decision having been made by the Asylum and Immigration Tribunal, the appeal continued as one in which the Asylum and Immigration Tribunal was reconsidering its decision. Paragraph 4 of Schedule 4 to the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (SI 21/2010) provides that the reconsideration "shall continue as an appeal to the Upper Tribunal under section 12 of the 2007 Act and section 13 of the 2007 Act shall apply".

(b) If, on the other hand, permission to appeal to this Tribunal was not granted at that earlier date, the application for permission to appeal continued under Article 6(1) of the 2005 Order as an application for an order requiring the Asylum and Immigration Tribunal to reconsider the decision: and under paragraph 2 of Schedule 4 to the 2010 Order, continued as an application to the First-tier Tribunal for permission to appeal under s.11 of the 2007 Act. If our decision to allow Ms Gill's decision to be treated as a grant of permission constituted the grant of permission, then it was made by judges of the Upper Tribunal in their capacity as judges of the First-tier Tribunal, and again the structure of the 2007 Act applies.

(c) If neither of those is right, then the appellant has no permission to appeal. It is, however, clear that whatever process might be used for obtaining permission to appeal or setting aside Ms Gill's determination as defective, any grant of permission to appeal would be for an appeal governed by the 2007 Act.

8. The relevant provisions of the Tribunals, Courts and Enforcement Act 2007 in relation to the method of determining an appeal to the Upper Tribunal are those in s.12:

> "12. Proceedings on appeal to the Upper Tribunal
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> (1) Subsection (2) applies if the Upper Tribunal, in deciding an appeal under section 11, finds that the making of the decision concerned involved the making of an error on a point of law.
> (2) The Upper Tribunal –

(a) may (but need not) set aside the decision of the First-tier Tribunal, and

(b) if it does, must either –

(i) remit the case to the First-tier Tribunal with directions for its reconsideration, or

(ii) re-make the decision.

…."

9. In order to succeed in the present proceedings, therefore, the appellant needs to show that the adjudicator made an error of law in his determination such that it should be set aside. We invited submissions identifying any error of law. After further discussion we agreed to adjourn the matter to enable substantive submissions to be made. We directed orally that unless substantive submissions to the contrary were made within 7 days of the hearing, the appeal would be dealt with on the papers and dismissed.

10. The Tribunal then received a letter from Latta & Co, asking for further time to make submissions on jurisdiction. The Tribunal replied, allowing further time, but pointing out that jurisdiction was not the issue. There has been no further communication from the appellant or his solicitors. In a note of argument sent on 23 July, however (before the correspondence to which I have just referred), an argument is raised on behalf of the appellant, asserting that the adjudicator erred in law by failing to grant an adjournment of the hearing.

11. The appellant's claim was an asylum claim. He had evidently made it some time before 19 October 2001. By the time the matter came before Mr Palmer over two years later, the appellant had failed to substantiate it in any way. He did not complete and return the SEF: none of the representatives who had acted for him had done anything to help him establish his case: then, given an opportunity to tell the adjudicator anything about his case, he failed to do so. Even now, thirteen years after his claim, the Tribunal has not been given any indication of the circumstances upon which it is based. The appellant's nationality does not appear to be disputed, but there is simply no evidence that might support the allowing of an appeal against the refusal of asylum. So far as the evidence before the adjudicator is concerned, his decision to dismiss the appeal is wholly unassailable.

12. Ms Gill's reason for granting permission to appeal to the Immigration Appeal Tribunal was that the adjudicator had given no reasons for his conclusion that the appellant was not credible. It is fair to say that, read as whole, the determination may be regarded as containing a number of reasons for that conclusion; but, even if the conclusion had not been open to the adjudicator, it is wholly irrelevant: there is nothing that might support the appellant's claim that was capable of being affected by the adjudicator's assessment of credibility. As we have said, there was simply no evidence that could have led that the conclusion that the appellant was at risk of persecution.

13. So far as concerns the assertion that the adjudicator ought to have granted an adjournment, the position is that that is not a ground upon which permission was granted. There has, in the ten years since Ms Gill's decision, been no application to raise any other grounds. In any event, however, the question whether to adjourn the hearing was clearly a matter on which the adjudicator took into account all the material before him. He noted the history to date. He noted in particular that the appellant had had a period of some six months to assemble his case after his original claim, if he had chosen to do so. He noted that despite what was already a passage of some years since the claim was made; the appellant had failed to offer any substantiation for it. He noted the fact that the appellant had had the assistance of a number of legal representatives. The question whether to adjourn was a matter for his discretion, and it does not appear to us that there was any perceptible legal error in his decision not to adjourn.

14. The note from the appellant's current representatives also raise questions about whether the appellant should have been granted leave to remain under policies existing at various times in the past. That is not a matter that falls for consideration in an appeal against the refusal to grant asylum.

15. For the foregoing reasons, we do not find that the adjudicator's decision contained any error of law. This appeal to the Upper Tribunal must therefore be dismissed. It is absolutely clear that no injustice to the appellant is caused by that decision. Despite his claim to fear persecution in Iraq, he seems to have done nothing to indicate the grounds of his fear. He remains in this country. If his fear is well-founded, he can no doubt make a properly supported claim. There is simply no basis for saying that he has been prevented from substantiating his claim at any time when he chose to do so.

16. The adjudicator's decision dismissing the appellant's appeal therefore stands.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 28 November 2014