



IAC-FH-CK-V1

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

Appeal Number: DA/01794/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 12 October 2015
Delivered Orally**

**Determination and Reasons
Promulgated
On 15 October 2015**

Before

UPPER TRIBUNAL JUDGE GOLDSTEIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**PAWAL SKOBEL
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms K Pal, Home Office Presenting Officer

For the Respondent: Respondent in Person

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of First-tier Tribunal Judge Morgan, who, sitting at Taylor House on 29 April 2015 and in a determination subsequently promulgated on 15 May 2015 allowed the appeal of the Respondent (hereinafter called the claimant), a citizen of Poland born on 18 June 1984 against the decision of the Secretary of State dated 15 September 2014 to make a deportation order in accordance with the Immigration (European Economic Area) Regulations 2006 with reference to Regulation 19(3)(b) of

the 2006 Regulations that the claimant should be removed from the United Kingdom and an order made in accordance with Regulation 24(3) that required him to leave the United Kingdom and prohibiting him from re-entering whilst the order was in force. The Secretary of State was satisfied that the claimant posed a genuine, present and sufficiently serious threat to the interests of public policy/public security if he were allowed to remain in the United Kingdom and that his deportation was thus justified under Regulation 21.

2. It was apparent to me at the outset of the hearing that the claimant was not legally represented and I therefore carefully explained to him that my first task was to decide whether or not the determination of the First-tier Tribunal Judge disclosed an error or errors on a point of law such as may have materially affected the outcome of the appeal.
3. In granting permission to appeal First-tier Tribunal Judge Grimmatt noted *inter alia* that it was “said that there was procedural irregularity in that the Judge rushed the hearing and refused to allow the Presenting Officer the opportunity to read the Appellant’s bundle” and that this issue was arguable in light of the evidence produced by the Presenting Officer. For the reasons that will follow it will suffice if I limit therefore my consideration of this appeal to that particular ground.
4. There was indeed attached to the Secretary of State’s grounds of challenge a statement dated 29 April 2015 that being the date of the hearing before the First-tier Tribunal, from Sandra McKenzie, the Presenting Officer at the hearing, and it stated as follows:

“This case was substantively heard before IJ Morgan today at Taylor House. The Appellant was unrepresented. The IJ arrived at 11.40pm to start the hearing and I told him that I thought it was a CMR today. We had a number of list changes and I was told this was an immigration list. I however said I had read and prepped from the RFRL so was ready to proceed having read the RFRL but needed to read the Appellant’s bundle which I did not have but he had. The Judge did not let me read the Appellant’s bundle though I asked for time to do so, he did not even let me see the Appellant’s bundle so I could check whether a copy of the papers he had was already in our files. All he allowed was a copy of the partner’s WS to be photocopied for me to read and ask questions about. I was not given a copy of the Appellant’s WS. On hearing the evidence from the Appellant a woman at the back of the court was feeding him answers and I commented this could not be allowed. It transpired the woman at the back of the court was the Appellant’s partner and the IJ having arrived in court late did not conduct the usual court procedural checks and as it appeared he wanted to get on with things quickly I did not even realise this part of the checks had not been done and the partner remained seated at the back.

I made my submissions on the fact the Appellant had not addressed his alcohol habit - which was said to be one of the main indicators for his offending behaviour.

I raised ESSA the IJ said this was not an ESSA case.

The Judge allowed the case on the spot stating he had taken on board the probation report and the risk assessment being low to the public.

The hearing lasted all of twenty minutes or so. I asked the IJ to dismiss.”

5. This account was challenged by the claimant in his written response to the grounds and insofar as it relates to this particular ground of challenge, he expressed his disagreement in the following terms:

“At the first hearing in December it was clearly stated that the next hearing is the last. The Judge set the date for delivery of documents by the Appellant by 31 March 2015. The Appellant delivered all documents on time.

On hearing 29 April 2015 Judge David Morgan simply noticed that Ms McKenzie was completely unprepared. There was enough time for both parties to prepare.

The Judge did not hurry, there was time for questions and statements given on both sides.

It is not true that the Judge did not allow the Respondent to read the documents of Appellant. There was an opportunity given by the Judge but Respondent did not accepted (sic).

It is clear that the Respondent was not prepared or ready for hearing.”

6. Before me Mr Skobel has helpfully clarified those remarks, having heard the brief submissions of Ms Pal for the Secretary of State. He told me as follows:

“I complied with the directions and sent my documents to the Tribunal and the Home Office. The Presenting Officer should have been ready because she should have had in her possession all my documents and at the previous hearing when directions were made before another Judge he said that the next hearing will be final.

I do not remember whether the Presenting Officer asked for a set of my own documents but I do remember that she asked for more time and that the Judge refused.”

7. It follows therefore from the claimant’s helpful clarification, that he indeed confirmed to me, that he could not be sure whether the Presenting Officer had made a request for his bundle or whether the Judge refused that request, but he made the point that whatever may have been the position, the Presenting Officer should have been ready to proceed in compliance with the earlier directions made.

8. It is apparent to me that the only basis upon which I could find in favour of the claimant's submission would be if I was to conclude that the Presenting Officer at the hearing had dishonestly misrepresented the situation in the face of the true circumstances. I am not prepared to make such a finding in the light of the Presenting Officer's representations as to the position she found herself in at the hearing before the First-tier Tribunal Judge and in any event the claimant has most fairly told me that he cannot exactly recollect whether the Presenting Officer made a request for the claimant's documents or not.
9. In those circumstances it is sufficient to say that the determination of the First-tier Tribunal Judge cannot stand as there has been a procedural irregularity which is sufficiently serious to amount to an error of law. In those circumstances it is not necessary for me to look any further at all in relation to the Secretary of State's other grounds because this ground is in itself sufficient to show that the decision cannot stand.
10. To illustrate why this is conclusive in the determination of the appeal is to consider what the position would have been if the circumstances were reversed. It is inconceivable that an Appellant could properly be asked to present his or her case without being aware of the evidence relied on by the other party. No-one can sensibly suggest that it is procedurally fair or acceptable to expect one party to proceed with the hearing without being aware of the submitted evidence upon which the other party has relied.
11. For those reasons the decision of the First-tier Tribunal Judge will be set aside in its entirety. The Secretary of State's appeal is allowed but only to the extent that the appeal is remitted to be determined afresh by a different Judge of the First-tier Tribunal.

Signed

Date 13 October 2015

Upper Tribunal Judge Goldstein