



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

Appeal Number: IA/37284/2014

THE IMMIGRATION ACTS

**Heard at Birmingham Employment
Centre
On 18 August 2015**

**Decision & Reasons Promulgated
On 20 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

**NOUMAN MEHMOOD KHAN
(NO ANONYMITY ORDER)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Puri, VKM Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Before considering the substantive issues, I record my thanks to Mr Puri who attended the hearing despite not being in funds. His courtesy to the Tribunal in so doing was obvious and his commitment to his client admirable; his presence was much appreciated.
2. Mr Puri indicated that he sought an adjournment as his client was unable to attend the hearing having been admitted on 9 June 2015 to hospital with acute psychosis and only having been discharged on 14 August 2015

to “controlled temporary accommodation” where he is under the supervision of an intervention team. Mr Puri did not have his client’s medical records. In fact, Mr Puri had lost contact with his client and it was only very recently he had been able to resume instructions.

3. Mr Puri had applied for an adjournment in writing on 13 August 2015 but had yet to receive a reply from Field House. I indicated that the application had not reached the appeal file and was probably “in transit”. I indicated that I would consider the adjournment request but before doing so I wanted to hear from Mr Mills regarding the substance of the grounds. As will become clear, there was in fact no need to adjourn.
4. The issue at the heart of the grounds of appeal to the Upper Tribunal was whether First-tier Tribunal Judge V A Osborne acted fairly when she decided at paragraph 50 of her decision and reasons statement:

“50. I find that if the Appellant was truly devoted to his children as claimed, he could have produced evidence of practical steps which he had taken towards securing contact with them which he has failed to do so.”
5. The appellant argues that this requirement for documentary corroboration of his oral evidence was wrong in that his oral evidence on other issues relating to his relationship to his children had been accepted. The grounds also identify that the appellant was without legal representation at the hearing and that he had not sought or obtained legal advice about his immigration matters until after the hearing.
6. Mr Mills was unable to concede the appeal but acknowledged that there were concerns as to the basis on which Judge Osborne had concluded that the appellant could have produced the evidence she expected, particularly in light of the recent developments in his mental health condition which Mr Puri had indicated might be related to the appellant’s previous drug and alcohol abuse. Mr Mills submitted that any error was not material because the burden of proof lay on the appellant.
7. I did not need to hear further from Mr Puri. Although I do not make a finding that the appellant presented with any mental health condition before Judge Osborne, I find that her decision in paragraph 50 to be unsound. Judge Osborne had accepted a number of key elements about the appellant’s relationship to his children which were only evidenced through his oral testimony. To then require corroboration was to raise the evidential bar above the civil standard of proof; and without further explanation and reasoning to do so must be wrong in law.
8. As I indicated at the hearing, the overriding objective in rule 2 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 requires that that Tribunal must deal with cases fairly and justly. That includes ensuring a party is able to participate fully in the proceedings and to bear in mind their abilities.

9. The appellant had no legal assistance in preparing or presenting his case. He had put in writing the fact he had applied to the County Court for access. Many people do not expect their word to be doubted and think that it is enough to give oral or written evidence about a matter. In this case, Judge Osborne accepted much of what the appellant said and therefore that expectation was sustained. It would appear that Judge Osborne wanted documentary evidence on one particular issue but did not give the appellant an opportunity of obtaining it. In the circumstances of this case, this was a further legal error because it undermined the principle of fairness.
10. Mr Mills indicated that if I were to find a material legal error then the appropriate course would be to remit the appeal to the First-tier Tribunal for a fresh hearing. Mr Puri agreed and so do I.

Decision

The decision and reasons statement of Judge V A Osborne contains legal errors which require me to set it aside and to remit it to the First-tier Tribunal.

Directions

The remitted hearing can be heard by any judge other than Judge V A Osborne.

The remitted hearing can be heard at the Stoke Hearing Centre subject to any listing directions of the First-tier Tribunal.

Standard directions regarding further evidence etc apply subject to any additional directions the First-tier Tribunal might wish to issue.

Signed

Date

John McCarthy
Deputy Judge of the Upper Tribunal