IAC-TH-CP-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04730/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25 April 2016	**On 28 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

HAROON HASSANI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Halim of Counsel
For the Respondent: Ms Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 1 January 1986. He is a national of Afghanistan.

2. He appealed against the respondent's decision to refuse his asylum claim dated 4 March 2015.

3. In a decision promulgated on 19 February 2016, Judge Hosie (the judge) dismissed the appellant's appeal against the respondent's refusal to grant him asylum. She did not find him to be a credible witness with regard to events in his own country, nor did she find that he would be at risk on return. The grounds claim the judge erred in law because of a procedural unfairness, in particular, that proceeding with the hearing was unfair and caused prejudice to the appellant. That was because the appellant's Counsel had sought an adjournment. There had been a previous decision of Judge Pedro in fast track dated 25 February 2013. The judge took Judge Pedro's findings as the starting point. The judge said in light of new evidence and a fresh claim before her, she did not accept all of Judge Pedro's findings. Nevertheless, she found the appellant's credibility was adversely affected for other reasons. In addition, she accepted that Judge Pedro found the appellant's cousin's evidence to be incredible.

4. The grounds described the history. The appellant had an earlier appeal dismissed in fast track. Ordinarily **Devaseelan** principles would apply to a second appeal, however, recent litigation in the Court of Appeal had found that the 2014 First-tier Tribunal fast track Procedure Rules were structurally unfair. The President in a number of linked appeals had set aside any decisions heard under that regime, due to unlawfulness, **Detention Action v SSHD [2015] EWCA Civ 840**. Accordingly, on 12 August 2015 the appellant applied to the Tribunal under Rule 32 to set aside the earlier decision and for the appeal to be remade afresh. As of the date of the hearing before the judge, the President had adjourned the application along with others on the basis that he felt the matters needed to be considered by the High Court, in particular, on the issue of the lawfulness of the 2005 Rules. The appellant's appeal had been previously subject to the 2005 fast track procedure system (the time limits found to be the root of unfairness were the same and in terms of listing, more strict in the previous incarnation of the Rules) and the President had identified a generic method of setting aside such decisions reached through an unlawful system by the application of Rule 32.

5. In the meantime, the appellant's appeal against the refusal of the fresh claim had been listed to take place on 8 January 2016. It had been hoped that the Rule 32 application would have been resolved earlier but that proved to be not the case. As the generic application had been adjourned, the appellant applied to adjourn his own appeal. The appellant's argument before the judge was that in light of the outstanding Rule 32 application, the judge was unable to proceed to resolve the appellant's appeal. The argument was that if the 2005 Procedure Rules were structurally unfair and thus unlawful, the earlier decision of Judge Pedro, reached in that process was equally unlawful such that no regard should be had to it. That was a preliminary issue that needed to be resolved before further analysis of the appellant's claim since the status of the previous decision of Judge Pedro was fundamental.

6. Judge Shimmin granted permission to appeal on 15 March 2016. He considered it was arguable that the decision of Judge Pedro should not have featured in the appellant's appeal in any form.

7. The respondent lodged a Rule 24 response. She submitted inter alia that the judge directed herself appropriately. In particular, that the facts surrounding the adjournment application were thoroughly covered at [13]-[18] of the decision. It was properly open to the judge to refuse to exercise her discretion. There were no procedural arguable errors of law and that the judge gave sound reasons at [18] of her decision not to adjourn.

Submissions on Error of Law

8. Mr Halim relied upon the grounds. He submitted that the judge erred because it was apparent that the previous decision was at the forefront of her mind and particularly so because it was relied upon by the respondent.

9. Ms Isherwood submitted that there was nothing wrong with the judge's decision. She had not relied upon Judge Pedro's findings in making her own adverse credibility findings.

Conclusion on Error of Law

10. The judge set out Judge Pedro's findings in detail at [38] of her decision. The judge said that she took Judge Pedro's findings as the starting point, although she did not accept all of his findings. She found the appellant's credibility was affected for other reasons which she set out at [52]-[58] of her decision.

11. The judge relied upon two findings of Judge Pedro. Firstly, that the appellant's cousin was not credible. The judge said at [47] that the cousin chose not to give evidence before her and there was no other evidence with regard to him. Secondly, the judge accepted Judge Pedro's finding that failure to claim asylum in either Greece or France was inconsistent with a genuine claim for asylum by a refugee in need of international protection.

12. The judge adopted a twin approach in terms of the limited application of **Devaseelan** and Judge Pedro's findings and also made her own independent assessment, in particular with regard to the new medical evidence.

13. I find the judge erred in the difficult analysis she had given herself (particularly bearing in mind the outstanding Rule 32 application), in distinguishing facts she could rely upon from the evidence before her, rather than the findings of Judge Pedro on the evidence before him.

14. Whilst the judge rightly observed that it is not beneficial to continually adjourn hearings in terms of indeterminate timescales, bearing in mind the extant Rule 32 set aside application before the Court of Appeal and the

fact that both sides were either keen to have or were sympathetic to an adjournment, that was perhaps the wise course to take.

15. I find the judge carried out an inadequate analysis at [52]-[58] of her decision, her views having become infected by the findings of Judge Pedro. As the judge decided not to adjourn and to hear the appeal, the findings of Judge Pedro should have played no part in her analysis and decision.

16. In my view, none of the judge's findings should stand. The appellant has shown errors of law in the decision such that it should be set aside and heard again de novo once the stay has been lifted involving all cases in the fast track category.

Notice of Decision

The decision of the First-tier Tribunal contains errors of law, is set aside and shall be remitted to the First-tier to be heard again de novo following the lifting of the stay.

Anonymity direction not made.

Signed Date 25 April 2016

Deputy Upper Tribunal Judge Peart