



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: AA/05955/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 15 January 2016**

**Decision Promulgated
On 4 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

M.M.A.H.A.S.

(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Kiai (Wilsons Solicitors)

For the Respondent: Mr S Kandola (Presenting Officer)

DECISION AND REASONS

1. This is the appeal of a citizen of Iraq born 1 January 1973, arising from the decision of the Secretary of State of 26 March 2015 to issue removal directions against him under section 10 of the Immigration and Asylum Act 1999. The matter having been dismissed by the First-tier Tribunal, the appeal now proceeds with permission in the Upper Tribunal.
2. Given the stance properly and pragmatically taken by the parties before me, my decision can be brief.
3. The Appellant claimed asylum on 26 February 2014 having previously been present lawfully. His claim was refused because his account was considered vague and speculative, and inconsistent as to his life before

coming to the United Kingdom as between the asylum claim and the application he had made for a visa to come here.

4. The First-tier Tribunal dismissed his appeal, primarily because it did not accept the veracity of his account, which it thought “vague, confused and full of inconsistencies”. Before hearing the matter, the Judge refused an adjournment application, sought by the Appellant because of his lack of legal representation, on the grounds that he had had sufficient time to find lawyers and had not established that he would qualify for public funding of his case.
5. Grounds of appeal contended, inter alia, that the adjournment refusal was inconsistent with the governing requirements of fairness that should animate the procedures and decision making of the First-tier Tribunal.
6. The advocates before me agreed that the refusal of the adjournment had been unfair, essentially for the reasons set out in the grounds of appeal.

Findings and reasons

7. As set out in *Nwaigwe (adjournment: fairness)* [2014] UKUT 418 (IAC), the relevant test when reviewing a decision impugned for alleged unfairness is one of fairness rather than rationality.
8. In my view, the First-tier Tribunal materially erred in law in failing to address relevant considerations. It failed to take account of the fact that the Appellant had provided a letter from Wilsons Solicitors stating that they would represent him if an adjournment was granted (whether or not via the legal aid scheme), that the refusal of public funding that had blighted his ability to instruct lawyers was for reasons out of his control, and that there were important documents available to him that required translation before his case could be fully put. Those bore critically on the issue of whether it was fair to proceed with a case in which the First-tier Tribunal’s primary duty was to afford anxious scrutiny to the material before it.
9. It is readily apparent that the Appellant's case might well have fared better with professional representation: the matters that concerned it, as to the clarity and consistency of the claim, are patently ones which might have been presented very differently with capable lawyers on board. So the error of law is a material one which fatally flaws the decision below.

Decision:

The making of the decision of the First-tier Tribunal contains a material error of law. Given that the Appellant has effectively been deprived of a fair hearing, it is appropriate to remit the appeal to the First-tier Tribunal to be considered afresh.

ANONYMITY ORDER

As the Appellant's claim to be a Convention refugee remains unresolved, unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

A handwritten signature in black ink, consisting of the letters 'MAS' followed by a stylized flourish that extends downwards and to the right.

Signed:
Deputy Upper Tribunal Judge Symes

Date: 15 January 2016