



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

Appeal Number: AA/06911/2015

**THE IMMIGRATION ACTS**

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

**Decision and Reasons  
Promulgated  
On 23 February 2016**

**Before**

**UPPER TRIBUNAL JUDGE STOREY**

**Between**

**[M S]**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation**

For the appellant:

For the respondent: Mr P Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of Morocco who brought an appeal against the decision of the Respondent on 30 March 2015 to refuse him asylum. His representatives were given as Halliday Reeves. At the case management hearing of his appeal fixed for a date in May 2015, neither the appellant nor his solicitors appeared. The same happened when the case was relisted to be heard by Judge Walker on 2 June 2015. In a

decision sent on 9 June 2015 Judge Walker dismissed the appellant's appeal on all grounds, including asylum and human rights grounds.

2. It is very unclear why Halliday Reeves did not respond to either of the appeal hearing notices, but the file shows that by at the latest 11 August 2015 the appellant had instructed The Passage and that this organisation then contacted the Tribunal in November asking for a copy of the appeal determination.
3. In the grounds of appeal subsequently lodged by The Passage it was noted that the appellant had mental health difficulties and could not remember the names of his previous solicitors. The grounds of appeal also attached medical evidence strongly indicating that at the time of the hearing in June 2015 the appellant was suffering mental health difficulties which resulted in his being admitted to a secure mental health facility on 2 July under s.2 of the Mental Health Act and not discharged until 1 October 2015. He was said to be now under the care of a statutory mental health team, although unfortunately he remains street homeless.
4. The first ground of appeal is that, even though not the fault of the tribunal judge, there had been a clear failure of procedural fairness in that the decision by the judge to proceed in the absence of the appellant or his representative was taken in ignorance of the appellant's mental health difficulties.
5. Given that the judge was aware that those helping the appellant at the original appeal stage had sought to obtain a report from the Helen Bamber Association, one would have expected the judge, before deciding to proceed with the hearing with only a Presenting Officer present, to have done more than simply note that notice of hearing had been sent to the appellant and those representing him. But irrespective of whether that is right, there occurred a clear error of process making it necessary to set aside the decision of the First-tier Tribunal and remit the appeal to be heard by the First tier Tribunal (other than Judge Walker). It cannot be said that there were no valid reasons for the failure of the appellant to attend and it would be unsafe to assume that Halliday Reeves considered themselves to be still acting or if they did that they acted diligently in relation to his pending appeal.
6. For the above reasons the First-tier Tribunal erred in law in proceeding with the appeal and its decision is set aside. The case is remitted to the First-tier Tribunal to be dealt with by another judge other than Judge Walker.

## **Directions**

7. **Within 14 days the appellant's solicitors (The Passage) are to write to Halliday Reeves (1) to confirm that the latter are no longer acting; (2) to request that Halliday Reeves hand on any**

**relevant files to The Passage. Within a further 14 days the appellant's solicitors (The Passage) are to inform the First-tier Tribunal of the results of these actions.**

- 8. Within 28 days the appellant's solicitors (The Passage) are to submit a detailed witness statement from the appellant covering (a) the basis on which he maintains he would face a real risk of serious harm on return to Morocco; (b) the basis on which he maintains that his removal to Morocco would breach his human rights. If the appellant is for whatever reason unable to give evidence at the fresh hearing before the First-tier Tribunal, this witness statement is to stand in lieu of oral evidence. There should not be any further adjournment of this case.**
- 9. Subject to further First tier Tribunal directions, both parties are to produce background country information relating to the issue of the extent of risk to male homosexuals in Morocco (this is an issue which appears to be in dispute between the parties).**

Signed  
Judge of the Upper Tribunal

Date: