



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/00357/2013

THE IMMIGRATION ACTS

Heard at Field House  
On 1<sup>st</sup> February, 2016

Decision & Reasons Promulgated  
On 15<sup>th</sup> July, 2016

Before

Upper Tribunal Judge Chalkley

Between

MR J.A.R.M.  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Lewis, Counsel instructed by Kidd Rapinet Solicitors  
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 their 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.**

### DECISION AND REASONS

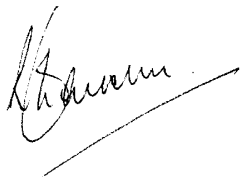
1. This is the appeal of Mr J.A.R.M., a citizen of Colombia, who was born on [ ] 1973. He entered the country on 13<sup>th</sup> August, 1987 to join his mother. In 2003 he made an application for leave to remain on the basis of his marriage to a person present and settled here and that application was subsequently rejected on 4<sup>th</sup> April, 2003. A further application was made on the basis of his long residence and that was recorded as being void and an application made on 30<sup>th</sup> July, 2003 concerning his leave to remain on the basis of marriage apparently remains outstanding.
2. On 20<sup>th</sup> April, 2003 the appellant pleaded guilty at Snaresbrook Crown Court to being involved in the importation of 35.8 kilos of class A drugs with a street value of £2,500,000. He was sentenced on 30<sup>th</sup> June to a total of thirteen years' imprisonment.
3. He claimed asylum on 28<sup>th</sup> April, 2008 and repeated that claim in 2009.
4. It was in March 2010 that the Border Agency contacted him concerning his liability to automatic deportation under the provisions of Section 32 of the UK Borders Act, 2007. On 25<sup>th</sup> October, 2010, the UK Border Agency again wrote to the appellant and suggested that his conviction was for a particularly serious crime and that he was deemed therefore to constitute a danger to the community in the United Kingdom and fell for exclusion from protection of the 1951 Refugee Convention. No representations made in rebuttal were made.
5. The asylum claim was refused by the respondent on 5<sup>th</sup> February, 2013 and the appellant appealed. His appeal was heard by the First-tier Tribunal on 11<sup>th</sup> February and on 8<sup>th</sup> June, 2013.
6. The hearing on 11<sup>th</sup> February proceeded with evidence from a police officer and at the adjourned hearing on 8<sup>th</sup> June, it was intended that the appellant should give evidence. However, he was ill and produced a letter in the form of a report from his general medical practitioner which said,

*"this patient is suffering from depression. He is currently not fit to work. He is also currently not fit to attend court to give evidence"*.

7. The judge seems to have been concerned by what his Designated Judge had said in refusing the adjournment, namely that there was no credible explanation as to why, whatever depression the appellant suffers from, is such as to make him unfit to attend court to give evidence. However, the judge had before him a medical report signed by a doctor who had expressed the view that the appellant was not fit to attend court to give evidence. That, as far as the judge is concerned, should have

been sufficient for him to adjourn the hearing. Instead, he proceeded with the hearing in the absence of the appellant, thereby, denying him the right to a fair hearing. Mr Avery suggested that the stance of the judge was justified because of the brevity of the report. I am afraid I disagree. The Tribunal has given huge amounts of advice concerning the care with which judges should pay attention to, and consider medical reports. The letter, brief though it was, was still a view expressed by a medical professional who had examined the appellant and should have been respected. The one person who ought to know whether or not an appellant is fit to attend the hearing is his own general medical practitioner.

8. In all the circumstances I conclude that the judge did err and erred to the extent that he denied the appellant a fair hearing. As a result I remit the appeal to the First-tier Tribunal for a hearing afresh by a judge other than First-tier Tribunal Judge Cockrill. Neither representative was opposed to that course of action. An interpreter will not be required but, given the fact that this required two days' hearing previously, I suggest that two days should be allowed for the hearing at the adjourned hearing.



**Upper Tribunal Judge Chalkley**  
15 July 2016