



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

Appeal Number: PA076942016

THE IMMIGRATION ACTS

**Heard at Field House
On 20th July 2017**

**Decision & Reasons
Promulgated
On 03rd August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**J U
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No Representative

For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Monson made following a hearing at Taylor House on 6th February 2017.

Background

2. The appellant is a citizen of Bangladesh born on [] 1978. He came to the UK on a visit visa on 29th September 2010, made an application for leave to remain on 29th February 2012 which was rejected on invalidity grounds, and then made a further application on 8th January 2013 which was refused. Following his arrest for immigration offences the appellant claimed asylum on 13th January 2016.
3. In a careful and well reasoned determination the judge analysed the appellant's asylum claim and concluded that there was no truth in it whatsoever. In particular he observed that the narrative disclosed by the court documents produced by the appellant in support of his claim did not tally with what was known about his whereabouts and was not consistent with the account given by him in his asylum interview. He concluded that the appellant could not be the same person as the JU referred to in the documents. They referred to an arrest and detention in 2009. However according to those documents he was still in detention at the time when he applied for a visit visa in August 2010 and indeed when he arrived in the UK in September 2010. He dismissed the appeal.
4. The appellant sought permission to appeal on the grounds that the judge had failed to consider that the appellant had faxed a letter to the Tribunal on the day before the hearing explaining that he might be unwell and requesting an adjournment. He also provided medical evidence which showed that he was at the hospital on the day of the hearing which he sent to the Tribunal on the day afterwards.
5. Permission to appeal was granted by Judge Robertson on the grounds that it was arguable that the appellant had been denied a chance to put his case before the judge.

The Hearing

6. The appellant represented himself with the assistance of an interpreter. He confirmed at the start of the hearing that he understood the interpretation.
7. He gave evidence about what had happened to him on 5th and 6th February. He said that on the day of the hearing, 6th February he had been in hospital for a long time, was thoroughly checked and observed and then allowed to go home. He had started suffering chest pains on the day before, at 10pm and took medication hoping that the pains would go away. He confirmed that the pains started around 10pm and then gradually increased. He was then asked why in that case he had faxed an adjournment request some hours before the pain started. The appellant said that he contacted his solicitor telling her that he had chest pains. It was pointed out to him that in his grounds he had said that he had de-instructed his solicitor, which is why she had not appeared on his behalf. The appellant was confused about when he had ceased to instruct her. He said that she had been his solicitor for a long time and he had de-instructed her recently but he did not know the date. All he could

remember was that he called her after 8 o'clock in the morning but he could no remember when.

8. Mr Kotas submitted that the claim that there had been procedural unfairness in this case had not been made out. There were serious anomalies in the evidence which cast doubt upon whether the appellant was actually unable to attend court because of illness. In any event his statement of case was before the Tribunal and there was therefore no material unfairness to him as a consequence of his absence.
9. The appellant said that he did not know why the Secretary of State did not believe that he was unwell. He repeated that he had been to the hospital for chest pain and all he wanted was a chance to carry on his case by using his solicitor. The medical evidence confirms that he told the doctor that he had had chest pain "since last night".

Findings and Conclusions

10. On 5th February at 18:08pm the appellant faxed a letter to the Tribunal asking for an adjournment of the hearing listed for the following day if he did not turn up because he had been suffering from consistent pains in his chest during the evening. He initially denied having sent the letter, then said he had forgotten whether it was sent or not and then that he contacted his solicitor informing her that he had chest pain. However this is wholly inconsistent with his evidence today which was that the chest pains did not start until 10pm that evening.
11. There is a further difficulty for the appellant. He sent a further letter, again clearly from the solicitors since it used the same typeface as the letter of 5th February 2017 enclosing a medical report. However according to his Grounds of Appeal he had de-instructed his solicitor. In his oral evidence he was very vague about when she had stopped acting for him, at one point saying that he had only de-instructed her recently.
12. Moreover the clinical summary sheet provided by North Middlesex University Hospital states that no procedures were necessary, no investigations were made and he required no drugs to be sent home with. His blood was normal and his chest was clear on examination. He did not require any follow-up treatment.
13. I conclude that the appellant did not suffer from chest pain as claimed. The evidence about when it started is inconsistent with his having written to the Tribunal earlier that day provisionally asking for an adjournment. The letters, which he accepts were written by his solicitor are inconsistent with his stating that she was no longer instructed and inconsistent with his evidence today that he had de-instructed her recently. The medical evidence makes it quite clear that in the view of the hospital there was no medical issue and indeed it would appear that he has not had to visit a hospital since that particular date.

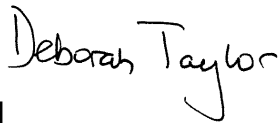
14. I conclude that the appellant chose of his own volition to absent himself from the hearing and accordingly there was no procedural unfairness in the judge dealing with the appeal on the papers which were before him. Those papers included a full witness statement from the appellant which set out his case and which was analysed by the judge and dismissed for the reasons which he gave.
15. The decision stands.

Notice of Decision

The appellant's appeal is dismissed.

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.



Signed

Date 2 August 2017

Deputy Upper Tribunal Judge Taylor