



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

Appeal Number: PA/12715/2016

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

**On 27th September 2017
Extempore**

On 10th October 2017

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**M S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Mupara, Counsel instructed by AA Immigration Lawyers

For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Hodgkinson promulgated on 10th March 2017 dismissing his appeal against the decision of the Secretary of State to refuse his protection and human rights claims.

2. The applicant is a citizen of Ukraine, originally from Afghanistan. It is not in dispute that he has significant and serious mental health problems which has resulted in him being sectioned pursuant to the Mental Health Act 1983. The appeal was initially adjourned in order for his solicitors to take further instructions, to obtain further evidence and also to obtain an expert report. It was then relisted on 22nd February 2017, approximately two months later.
3. On 16th February the appellant's solicitors sent a letter by fax to the Tribunal requesting a further adjournment as the judge noted at paragraph [22] for different reasons. The letter states that the applicant had been detained and "sectioned" under the Mental Health Act 1983. This is recited by the judge and he concluded however that as there was no indication as to when the appellant would be fit to give evidence that it would not in the circumstances be fair and appropriate to adjourn the case.
4. I am guided in this case by AM (Afghanistan) [2017] EWCA Civ 1123 which, although it postdates the decision and the grant of permission in this case, is clearly and manifestly of relevance. It emphasises, amongst other things, the need for Tribunals, particularly the First-tier Tribunal, to have proper regard to the Practice Direction 'First-tier and Upper Tribunal Child, Vulnerable Adult and Sensitive Witnesses' issued by the Senior President and to the Joint and which are annexed to AM (Afghanistan). Regrettably there appears to have been Presidential Guidance Note No 2 of 2010. There is no proper indication that the judge considered that the appellant, who had been sectioned under the Mental Health Act and could not attend his appeal was a vulnerable individual, or that the relevant guidance was applied.
5. The failure to follow the guidance in my view is a sufficient basis of which it could be said that this was not a procedurally fair way in which to proceed and on that basis I consider that the decision did involve the making of a procedural error such as to deprive the appellant of a proper hearing.
6. In reaching that conclusion I do however note that the solicitors did not attend the hearing and no good reason is provided for their other systematic failures in failing to comply with directions in this case, but I bear in mind that I am dealing here with an individual who was at the relevant time in a particularly vulnerable position and facing considerable if not insuperable difficulties in instructing lawyers to represent him. For these reasons I am satisfied that there was a procedural error amounting to an error of law and I set aside the decision on that basis.
7. I am satisfied that, given the nature of the error, the appellant was deprived of a proper hearing before the First-tier Tribunal and that therefore the appeal should be remitted to the First-tier Tribunal for a fresh decision on all issues.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal is set aside. I remit the decision to the First-tier Tribunal for a fresh decision on all issues.
2. It is for the First-tier Tribunal to ensure that, on this occasion, the relevant guidance is followed, and it would be advisable for detailed, case-specific directions to be given and the need for reasonable adjustments considered before this matter is listed again for substantive hearing.
3. I make an anonymity direction, given the appellant's state of health and vulnerability.

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: 9 October 2017



Upper Tribunal Judge Rintoul