Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/12917/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30 June 2017	**On 13 July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

MR H M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Asigo, Solicitor instructed by R.O.C.K. Solicitors
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. The appellant is a national of Uganda who was born on 24 April 1988. He entered the United Kingdom on 29 September 2015 with a visit visa valid

until 9 March 2016. He overstayed at the end of his visa period and remaining in the United Kingdom unlawfully. On 22 April 2016 he attended the Asylum Intake Unit and was given an appointment for 11 May 2016 on which day he formally claimed asylum. The respondent refused the appellant's claim for asylum on 9 November 2016. The respondent did not accept that the appellant was homosexual as claimed and did not accept the appellant's account as credible. The respondent considered that the appellant was not entitled to humanitarian protection and that the UK would not be in breach of the European Convention on Human Rights if he were to be returned to Uganda.

The appeal to the First-tier Tribunal

3. The appellant appealed against the respondent's decision to the First-tier Tribunal. In a decision promulgated on 6 February 2017 First-tier Tribunal Judge P-J S White dismissed the appellant's appeal. The judge did not consider the appellant's claim to be credible. He did not accept that the appellant was homosexual or that he had previously been arrested or is presently wanted on that account. No Article 8 claim was advanced before the First-tier Tribunal. The judge found that the appellant could not satisfy the requirements of Appendix FM or paragraph 276ADE of the Immigration Rules HC 395 (as amended) and that there were no compelling circumstances, not sufficiently recognised under the Rules, which might make removal of the appellant disproportionate.

4. The appellant applied for permission to appeal against the First-tier Tribunal's decision. On 19 May 2017 First-tier Tribunal Judge Grant-Hutchison granted the appellant permission to appeal.

The hearing before the Upper Tribunal

5. The grounds for permission to appeal argue that the judge made an error of law in failing to adjourn the hearing. The grounds assert that the appellant had changed representative and that the previous solicitors were no longer instructed and that vital evidence had not been included in the documents before the First-tier Tribunal. The appellant had indicated to the judge that he felt misrepresented, that he could not deal with the matter on his own and that he had instructed new solicitors. It is asserted that the appellant stated at the hearing that his witness statement did not deal with the issues raised by the Home Office, that it was not read back to him and it did not contain everything he wanted.

6. The Secretary of State had served a Rule 24 response. However, at the commencement of the hearing Mr Bramble indicated that he was not pursuing the reasons set out in the Rule 24 response. Mr Bramble very helpfully indicated that it was accepted by the Secretary of State that the First-tier Tribunal Judge had erred. He submitted that it was not accepted that then failure to adjourn amounted to an error of law. He submitted that in this case the appellant had changed his representative 48 hours before the hearing, a bundle of documents had been provided but the new representatives did not attend the hearing. The most significant issue he

submitted was that the appellant had raised issues regarding the lack of information in his witness statement and that his witness statement was incorrect. The error of law arose because the judge went on to make adverse findings in reliance on the appellant's witness statement, for example at paragraph 23. He submitted that if the witness statement had been identified as problematic and not representative of what the appellant had told his former solicitors then the judge should not have relied on it or made adverse inferences on the basis of its contents. He accepted that that was a material error of law.

7. Ms Asigo submitted that the appellant had stated to the judge that he had no confidence in his solicitors. The failure to adjourn to enable the appellant to have a representative was an error of law as in this case the appellant had instructed a new representative but there had not been time for them to prepare the case.

Discussion

8. The First-tier Tribunal Judge in this case adopted a fairly meticulous approach to consideration of the evidence and set out in full his findings and reasons for those findings. The judge set out:

> "18. I ascertained that no one had attended the Tribunal from or on the instructions of R.O.C.K. Solicitors. I then heard from the appellant. He explained that he wanted an adjournment. The letter had set out four matters, which were that he is an asylum seeker and not entitled to work, that he cannot afford to pay for representation, that he had instructed his new solicitors to act for him on legal aid, and that he said that the witness statements submitted by his previous solicitors did not deal with the issues raised by the Home Office for refusal of his claim. The appellant told me that the first witness statement was not read back to him and that not everything he wanted included was in it, and therefore he felt misrepresented. He said that he had been asked to pay money which he did not have and thought that might be why some issues were lacking. He explained that there were issues relating to paragraphs of the refusal letter not included, that he could not deal with the matter on his own, and that he was now a member of Out and Proud African LGBTI. He added that whenever he went to his previous solicitors they would only be asking him for money. I asked him whether he had made any complaint and he said that he had shown his statement to a friend who thought they would not be of any more help to him.
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> ...
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> 20. The appellant in reply said that he had some evidence which had been left with his new solicitors which would help to prove he was gay. This evidence was photographic. In answer to a question from me he further explained that these were pictures taken the previous day and showing him involved in activities with friends who are gay.
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> 21. I refused the application to adjourn. I was satisfied that there had been ample time to prepare the appeal, which turned on the single issue of whether or not the appellant is gay. It was apparent that his previous

> solicitors had done considerable work to prepare the case, while his new solicitors had done nothing save to try to ensure that the appeal was adjourned, and had not even attended the hearing to support that application for an adjournment. I was not satisfied that the absence of evidence, in the form of photographs taken the day before the trial, would have a material effect, and I noted the letter from the solicitors did not refer, as a reason for the adjournment, to the presence of further evidence. I was further satisfied that the appellant would be perfectly well able to explain to me what it was that had been omitted from his witness statement. There was no indication of any actual complaint made to the former solicitors and it seemed to me that this was little more than a device to put off the day at which the appeal would be heard. In all the circumstances it was not in accordance with the interests of justice or the overriding objective to put the matter off to another day."

9. On the facts of this case I consider that the First-tier Tribunal Judge was entitled to consider that proceeding without an adjournment would not result in unfairness to the appellant. It is clear that the judge considered that he would be able to deal with issues raised by the appellant.

10. However, I do however accept the submissions made by Mr Bramble that, having proceeded to hear the appeal, the judge ought to have exercised extreme caution in making any adverse findings based on the witness statement of the appellant. At paragraph 23 the judge set out:

> "23. ...I note first that the witness statement prepared for him and signed and adopted by him did include responses to the refusal letter, clearly indicating that his former solicitors had gone through it with him, but did not include this challenge. ...I am in no doubt that he did claim that his friend was sitting on Y's lap, and is now seeking to retract that evidence."

11. At paragraph 24 the judge set out in detail evidence from the appellant's interview and noting his concerns with the evidence about the incident in the shower at school. At the end of that paragraph the judge records:

> "Again, none of this featured in the witness statement".

12. The judge has drawn adverse inferences from the appellant's failure to respond to or challenge the respondent's concerns by essentially finding there were omissions in the appellant's witness statement. Given the appellant's concerns, as expressed at the commencement of the hearing and in the application for an adjournment, had these shortcomings been remedied it could have made a difference to the outcome of this appeal. On the facts of this case given that credibility was core to the appellant's claim and that this is an asylum claim the interests of fairness require that the appellant's appeal is re-heard.

13. I find that there was a material error of law in the First-tier Tribunal's decision. I set aside that decision pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 ('TCEA').

14. I remit the case to the First-tier Tribunal for the case to be heard de-novo before any judge other than Judge P-J S White pursuant to section 12(2)(b) and 12(3)(a) of the TCEA be listed at the next available opportunity at Hatton Cross.

Notice of Decision

15. The decision of the First-tier Tribunal contained a material error of law. The case is remitted to be heard on the next available date at Hatton Cross before any judge other than Judge P-J S White.

Signed P M Ramshaw Date 11 July 2017

Deputy Upper Tribunal Judge Ramshaw