



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

Appeal Number: AA/00064/2016

THE IMMIGRATION ACTS

**Heard at Newport
On 22 March 2018**

**Decision & Reasons
Promulgated
On 26 April 2018**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**[M M]
(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr I Richards, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Iran, has permission to challenge the decision of Judge Clemes of the First-tier Tribunal (FtT) sent on 18 August 2016 dismissing his appeal against the decision made by the respondent in December 2015 refusing to grant asylum and humanitarian protection. The appellant had first submitted an asylum claim in March 2012. This has been refused in July 2014. After he had been awarded discretionary leave under the UASC policy until 2 February 2015, he made an in-time application for further leave on 7 February 2015. The appellant did not

attend the hearing before the FtT judge. The judge's reasons for deciding to proceed with the hearing were set out in a paragraph 3:

"3. The appellant did not attend the hearing which was called on at 11.35 a.m. There had been no appearance before that time and the Tribunal Clerk had kept a regular check on whether or not the appellant had appeared. The file was checked and it was noted that the appellant had once instructed solicitors but that they had come off the record as of 28 July 2016. Notice of hearing had been sent to the appellant on 3 February 2016. A further notice had been sent on 20 July 2016 to the appellant at his address. I applied Rule 28 of the Immigration and Asylum Chamber Tribunal Procedure Rules 2014 and was satisfied that the appellant had had notice of the hearing and that - absent of any application to adjourn or any other communication from the appellant - it was in the interests of justice to proceed and hear the appeal in the appellant's absence."

2. The appellant's grounds contend that the judge's decision to proceed with the appeal in his absence was procedurally unfair because the appellant only became aware that the FtT had heard and dismissed his appeal on 15 November, when it was received by his current representatives, after they had requested a copy of the decision. It was contended that the appellant had previously pursued his claim in a timely manner through representatives by way of his initial asylum claim and subsequent application for discretionary leave which led to the refusal of his case and his appeal against it.
3. At the hearing before me the appellant was unrepresented but said he wished to proceed with the hearing. I then heard briefly from Mr Richards and the appellant in that order so as to give the appellant the opportunity to hear the case against him before having to make submissions himself. In brief Mr Richards submitted that there had been no procedural unfairness. The appellant relied on his witness statement with the following clarification. Reminded that he had received the respondent's refusal decision in December 2015, and exercised his right of appeal in time, the appellant said he had been in contact with his solicitors after lodging his appeal. At some point in early 2016 he had been informed by his solicitors that a hearing date had been fixed for his appeal. He had not been able to keep in touch with his solicitors or the First-tier Tribunal because he had been homeless and had no legal aid.
4. I do not find that there as any procedural unfairness on the part of the judge.
5. It is clear from the file that the appellant was sent a notice of hearing on 3 February 2016 and a further notice on 20 July 2016. It is further clear from the file that on both occasions the notice was sent to the appellant's last known address (Stroud Road, Gloucester). The appellant claims that he never received these notices because he had not lived at the Stroud Road address for three years. For the purposes of this appeal I am prepared to accept that this is correct. Also for the purposes of this appeal I am

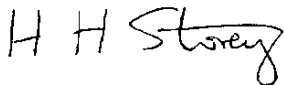
prepared to accept, in the appellant's favour, that it was difficult for him to inform the respondent, as he was obliged to do, that he had changed his address because he was moving from place to place and was of no fixed abode.

6. However, there remains a major difficulty for his submissions. The records show that the appellant gave notice of appeal on 11 January 2016. In his Statement of Late Appeal signed on 20 November 2017, the appellant confirms that he was told by his previous representatives that he had an appeal hearing in August. In this statement he states that the hearing was in August 2017, but he accepted before me that he was told about the August hearing in early 2016 and that cannot have meant August 2017.
7. Given that the appellant knew in advance about the month (if not the precise date) of his hearing (August 2016) I conclude it was incumbent on him to have taken active steps to attend it. In his statement he says that his previous solicitors did not give him any paperwork to confirm the August hearing. This claim is difficult to square with his further claim that his representatives contacted him in late July stating that he needed to attend their office and give instructions about the appeal (he said he was too far away to attend). It is reasonable to assume that the Migrant Legal Project would have reminded him of the date and place of hearing. But even if he is correct in claiming he was never given either the date or the paperwork, this does not suffice to excuse his failure to contact his solicitors to find out the date or indeed to contact the First-tier Tribunal. On his own account he did nothing. He cannot have been unaware that he had a hearing date coming up and that he let that date come and go without doing anything about it.
8. The appellant has sought to explain his inaction by referring to the fact that he was homeless and moving from place to place, but I do not consider that these difficulties suffice to explain or justify his inaction in respect of the August 2016 hearing. He has not suggested that during the time he was moving about or that he had lost the contact details for his solicitors. The file record shows that his previous representatives did not come off the record until 20 July 2016. On his own account he had had several months to obtain precise details from his previous solicitors before they came off the record.
9. Compounding the problems with the appellant's account is that he continued to do nothing for over a year. From his own account no contact was made with his previous representatives until October 2017 when he took the file from his previous representatives and took steps to instruct new representatives (who then obtained the FtT decision on 15 November 2017). During all this time the appellant cannot have been unaware that his hearing date had come and gone, yet he did nothing.
10. In assessing the issue of procedural fairness, I have taken into account the various items of evidence that the appellant had sent to the respondent

including a statement from a psychotherapist dated 2014 which sets out that the appellant has a fragile and volatile state of mind caused partly by the length of time the appeal process was taking. I note that the appellant's state of mind did not stop him from adhering to time limits and keeping contact with representatives whilst lodging his appeal.

11. The appellant contends that the procedural fairness he experienced was aggravated by the fact that he had a good case because the respondent had accepted some important aspects of his claim, namely that the appellant was a national of Iran, Kurdish and that he had exited Iran illegally. However, the basis of the appellant's claim for asylum was that he was at risk on return to Iran since he had come to the attention of the authorities because he had worked for the Kurdish Democratic Party (KDP), recruiting members and organising demonstrations. The respondent had rejected this claim in light of material inconsistencies as well as some implausible aspects. The appellant, even though represented at the time he appealed (and for a further six months) took no steps to seek to explain these inconsistencies or to adduce further evidence. In such circumstances, it was entirely fair and reasonable of the judge to find that the appellant had not given a credible account.
12. The judge further considered whether the appellant was nevertheless entitled to succeed in his appeal by virtue of his profile as a Kurd who may have exited illegally. The judge's account at paragraph 19 properly applied Tribunal country guidance (**SB (risk on return, illegal exit) Iran CG UKAIT 00053**) and the appellant's grounds wholly fail to identify any error of law in that assessment.
13. I do not consider that the particulars of the appellant's claim, as analysed by the respondent and the judge, were such as to call for any reconsideration on the basis of procedural fairness.
14. For the above reasons:

The FtT Judge did not materially err in law and his decision dismissing the appellant's appeal is upheld.
15. No anonymity direction is made.



Signed:
2018

Date: 25 April

Dr H H Storey
Judge of the Upper Tribunal