



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00172/2018

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice
On 2 July 2018

Decision & Reasons Promulgated
On 12 July 2018

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MR CHIMA COLLINS MADU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Hawkin, instructed by Victory Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Rowlands promulgated on 17 April 2018, dismissing his appeal against a deportation order.
2. The thrust of the grounds of challenge is that Judge Rowlands erred materially in giving the appearance of bias during the hearing and in his decision.
3. Unusually in cases of this case type there is no dispute as to what was said by the judge. It is not in dispute that during the evidence of one of the witnesses, the judge interrupted her. This is recorded in his decision at paragraph 23:-

“At this point I interrupted the witness and pointed out that the one thing the appellant did not have was honesty and integrity bearing in mind the way he

had obtained a job with false documents and continued with that deception. The appellant's representative took a short adjournment and came back and specifically criticised me for making such a statement on the basis that it indicated that I had already made a decision as to what I thought of the appellant's evidence. I pointed out that all the evidence had said much the same thing and that this fell in the face of the actual evidence of the appellant's dishonesty and total lack of integrity. That was the end of the evidence."

4. The judge then went on to hear submissions.
5. In assessing whether there was here a fair hearing, or whether there was actual bias, the applicable test is:-

"Whether the fair-minded observer, having considered the facts, would conclude that there was a real possibility that the Tribunal was biased."

6. As is apparent from Alubankudi (appearance of bias) [2015] UKUT 542, it is to be borne in mind that an important attribute of the hypothetical reasonable observer is that he is duly informed that is that he was aware of everything bearing on the question of the judge's impartiality.
7. It is not per se impermissible for a judge to give provisional views so long as he conscientiously maintains an open mind of note if what was said by Sir Thomas Bingham MR in Arab Monetary Fund v Hashim [1992] 6 Admin Law Report 348

But on the whole the English tradition sanctions and even encourages a measure of disclosure by the Judge of his current thinking A judge does not act amiss if, in relation to some feature of a party's case which strikes him as inherently improbable, he indicates the need for unusually compelling evidence to persuade him of the fact."

On the other hand, the English tradition -

" ... certainly does not sanction the premature expression of factual conclusions or anything which may prematurely indicate a closed mind

An expression of scepticism is not suggestive of bias unless the judge conveys an unwillingness to be persuaded of a factual proposition whatever the evidence may be. "

8. In Singh v SSHD [2016] EWCA Civ 492 the Court of Appeal held at [35]:
" Indeed, such statements sometimes can positively assist the advocate or litigant in knowing where particular efforts may need to be pointed
In fact, sometimes robust expression may be positively necessary in order to displace a presumption or misapprehension, whether wilful or otherwise, on the part of an advocate or litigant on a point which has the potential to be highly material to the case. "
9. I consider that in this case the nature of the interruption was such that one might be of a point which could have been raised by way of cross-examination. It goes beyond what could be considered as a "robust expression". It is not a type of interruption one would expect from a judge as it is strongly indicative that he had already reached his conclusions. I do not consider that the remarks could be seen as being a preliminary view and it is of note that his subsequent findings are predicated on the basis that the

appellant is a thoroughly dishonest person whilst it may well be that there had been a previous finding by Judge Telford that the appellant was totally lacking in credibility that was in another appeal. I am satisfied that the views expressed by Judge Rowlands indicated a descent into the arena and also that he had closed his mind before hearing submissions.

10. Viewing this as, a fair-minded observer in possession of all the facts, I conclude that such a person would conclude that there was a real possibility of bias in this case. The appellant was thus deprived of a fair hearing. Given that he had a right to a fair hearing, this amounted to an error of law, and the decision must be set aside on that basis. It is therefore unnecessary for me to address the other grounds.
11. In the circumstances as I am satisfied that there was no fair hearing, the only way in which this matter can be remedied is for the matter to be remitted to the First-tier Tribunal for a fresh hearing on all issues.

Notice of Decision

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- (2) I remit the decision to the First-tier Tribunal for a fresh decision on all issues to be heard by a judge other than Judge Rowlands.

No anonymity direction is made.

Signed

Date 3 July 2018



Upper Tribunal Judge Rintoul