



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/11033/2017

THE IMMIGRATION ACTS

Heard at Field House
On 22 October 2018

Decision & Reasons Promulgated
On 26 October 2018

Before

UPPER TRIBUNAL JUDGE PITT

Between

EAK
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not represented
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision promulgated on 3 May 2018 of First-tier Tribunal Judge Monson which refused EAK's protection and human rights appeals, brought in the context of a deportation order made on 21 September 2017.
2. 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. I do so in order to avoid a likelihood of serious harm arising to the appellant's family.

3. EAK is a citizen of Togo. He came to the UK in 1995 and claimed asylum. He also applied for leave on the basis of having British children with his partner. On 17 April 2008 the applicant was granted indefinite leave to remain under the legacy programme. On 21 July 2015 he was sentenced to 5 ½ years' imprisonment for attempted sexual activity by penetration with a female child. The child concerned was his oldest daughter. The respondent's deportation order made on 21 September 2017 followed.
4. The appellant maintained that he could not be deported on protection and human rights grounds. His appeal came before the First-Tier Tribunal on 16 April 2018. He was not represented and did not attend. The First-Tier Tribunal found that it was in the interests of justice to proceed where he had been notified on 22 February 2018 of the hearing and provided with a guide for unrepresented appellants and a production order sent to HMP Highpoint. Further on the day of the hearing, the court clerk was informed that the appellant was by then detained at Brook House and had declined to come to the hearing "because he thought his solicitors were withdrawing his case"; see [48] of the First-Tier Tribunal decision.
5. There was no dispute before me that the appellant was moved from HMP Highpoint to Brook House on date between 10-16 April 2018. Nothing on the Tribunal file shows that the Tribunal was aware of the transfer prior to the hearing on 16 April. Indeed, the Tribunal continued to write to the appellant at HMP Highpoint after the First-Tier Tribunal hearing, sending the appeal determination there on 3 May 2018. It is obvious, where that is so, that no production order was made for the appellant to be produced for the First-Tier Tribunal hearing on 16 April 2018.
6. Even if he had received the notice of hearing whilst at HMP Highpoint (which he denies emphatically) given the transfer took place only a few days (at best) prior to the First-Tier Tribunal hearing and no production order was sent to Brook House I accept that the appellant did not have the opportunity to attend the hearing on 16 April 2018 to represent himself and put forward his evidence. The information provided by the clerk as to his declining to attend on 16 April 2016 could not carry weight, in my judgment, where, as the First-Tier Tribunal noted, the appellant has never been represented in this substantive appeal (rather than his bail matters) and it did not make any sense that he would refer to legal representatives "withdrawing his case" when he has always sought to oppose deportation.
7. I therefore found a procedural error arose where the appellant was not afforded the opportunity to represent himself and give evidence before the First-Tier Tribunal. Where that is so, the decision of the First-Tier Tribunal must be set aside to be re-made *de novo*. Where there are no extant findings of fact and the appeal is to be re-

made afresh, it is appropriate for that re-making to take place in the First-Tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade *de novo* by the First-tier Tribunal.

Signed: 
Upper Tribunal Judge Pitt

Date: 22 October 2018