



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00028/2018

THE IMMIGRATION ACTS

Heard at Field House
On 4 September 2018

Decision & Reasons Promulgated
On 19 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

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

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Short, Counsel, instructed by Elder Rahimi Solicitors
(London)

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, whose date of birth is 1 January 1969, is a citizen of Pakistan, appeals against a decision of First-tier Tribunal Judge Greasley ("FtT") promulgated on 15 May 2018 in which the FtT dismissed the appeal on protection and human rights grounds.

Grounds of appeal

2. The grounds of appeal argued that the FtT failed to grant an application for an adjournment, which resulted in the substantive hearing being held in the absence of the appellant and any witnesses, thus depriving the appellant of his right to a fair hearing.
3. The second ground argued that the FtT gave unsustainable reasons for refusing the adjournment including irrelevant considerations, unfounded speculation and unreasonable surmise.
4. Permission to appeal was granted by First-tier Tribunal Judge Osborne on 25 June 2018.

Error of Law Hearing

5. At the hearing before me Ms Short relied on the grounds of appeal and expanded on the same. The detailed submissions are set out in the Record of Proceedings and have been taken into account by me.
6. Mr Avery confirmed that there was no Rule 24 response and he similarly made submissions which I have set out in the Record of Proceedings.

Decision

7. Having heard the submissions and considered the decision and grounds of appeal, I have decided that there was a material error of law.
8. The appellant did not attend the hearing and neither did his witnesses. At the hearing an application for an adjournment was made on the basis of medical grounds and a hospital discharge form dated 24 April 2018 was submitted, showing that the appellant had been taken to hospital by ambulance, having been found unconscious. He was due to be seen by the crisis team. Solicitors provided evidence for the FtT that the visit from the crisis team was due to take place on the morning of the hearing. Whilst enquiries revealed that the appellant was at home and lived close by to the hearing centre, he informed his representatives that did not feel well enough to attend court.
9. In the decision and reasons at [31] to [37] the FtT considered the application for the adjournment and refused the same. The FtT took the view that whilst the appellant had provided some evidence to show that he attended hospital, there was no evidence to show that he would not be able to attend the hearing to give evidence. It was accepted that the discharge note also referred to the fact that the appellant appeared to be clinically depressed. The FtT considered that the appellant nevertheless would reasonably have been able to attend the hearing. The FtT also took into account that the appellant's witnesses had not attended either.

10. The FtT further took into account that a previous application for an adjournment had been made and granted on 1 February 2018. The reason for that adjournment was that the appellant's representative, Mrs Choudhry, was unwell.
11. I had regard to all of the evidence before me including the discharge note from Ashford and St. Peter's Hospital NHS Trust dated 24 April 2018 together with a letter from Hillingdon NHS dated 19 April 2018 confirming that the appellant was receiving counselling due to depression. I also considered the appeal in light of the nature of the asylum claim, which was that the appellant was a gay man and in fear of persecution in Pakistan. The core issue for his appeal was credibility and accordingly it is my view that his attendance at the hearing was absolutely necessary.
12. I have decided that the appellant did not have a fair hearing. The FtT did not give proper consideration to the relevant issues and to the overriding obligations in refusing the application for an adjournment in circumstances where there was ample reliable evidence to show that the appellant was not well enough to attend the hearing. The FtT placed too much weight on a previous adjournment which had been granted because of sickness of the representative.

Notice of Decision

13. There is a material error of law. The decision is set aside. The matter is to be reheard before the First-tier Tribunal at Hatton Cross (excluding First-tier Tribunal Judge Greasley).

No anonymity direction is made.

Signed

Date 17.9.2018

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

Signed

Date 17.9.2018

Deputy Upper Tribunal Judge G A Black