



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

Appeal Number: PA/00869/2017

THE IMMIGRATION ACTS

Heard at Field House

On 18 December 2017

**Decision & Reasons
Promulgated**

On 23 January 2018

Before

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

Between

**ZH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Palmer of Counsel, instructed by Barnes Harrild & Dyer Solicitors

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Iran said to be aged 17. In a decision promulgated on 26 June 2017 First-tier Tribunal Carroll dismissed his appeal against the decision made by the respondent on 28 January 2017 refusing to grant him asylum.

2. The basis of the appellant's asylum claim he made on 13 July 2016, several weeks after arrival in the UK, was that he was of Kurdish ethnicity. When his father had been arrested by the authorities for involvement with the PJAK he had fled to his paternal aunt's house where he stayed for a month before departing Iran. The appellant was represented by Counsel at the hearing but did not attend.
3. On 5 June 2017 the judge refused Counsel's application for an adjournment. The circumstances are set out by the judge at paragraphs 5 to 8 of his decision. At paragraph 5 the judge noted that shortly after ten o'clock the appellant's Counsel said that his client had not arrived. He had, therefore, asked the interpreter provided by his instructing solicitors to telephone the appellant. The appellant had said both that he was unwell and that he was being moved to a new foster carer on the day of the hearing of the appeal. The judge then asked Counsel to seek further information, put the matter back on the list, and at 10.30 Counsel said that he had been told by the interpreter that the appellant had said that he had been depressed and upset and had self-harmed two weeks ago. Counsel said that he understood that the appellant had been admitted to Croydon University Hospital for nine days and upon release his foster carer refused to accommodate the appellant. The appellant had therefore been moved to semi-independent accommodation while a search was made for a new foster carer.
4. The judge then went on to observe that Counsel was unable to provide any evidence of the hospital admission or any evidence from Social Services relating to the claim that the appellant was expecting to move to new accommodation on the day of the hearing. The judge concluded at paragraph 8:-

"In the absence of any medical evidence from the appellant or evidence that he was expecting to move to new accommodation on the day of the hearing I refused the application for the adjournment and directed that the hearing should proceed in the absence of the appellant. The hearing proceeded on the basis of submissions only."

On the basis of those submissions the judge proceeded to dismiss the appeal.

5. Having heard briefly from the parties I have decided to set aside the decision of the First-tier Judge. If I confine myself solely to the state of the evidence before the judge, I would not have found a material error; but in the nature of a challenge of this kind I must have regard to evidence that was in existence prior to that date. Whilst the judge cannot be criticised for failing to have regard to evidence not before him, I now have before me the evidence from the Croydon University Hospital in the form of a discharge summary demonstrating that the information given by the appellant over the phone to Counsel on the day via an interpreter had some basis in fact. Even though the chronology given by the appellant through an interpreter was not precise, it is now clear that his claim to

have had medical problems sufficient to require his admission to Croydon University Hospital on 19 May and for him to remain there until 24 May was substantially true. Although it remains that his solicitors have not produced any evidence from Social Services, Mr Palmer has been able to confirm that communications regarding evidence from this source have been in process.

6. I conclude that it is likely given the appellant's age that he is under the care of Social Services and that his further claim over the phone that he was experiencing difficulties over accommodation with the new foster carer was likely also to have some basis in fact.
7. In considering the matter of whether I can take into account evidence not before a judge I must take note of the fact that the appellant is a minor and that he did attend a previous hearing. Although he and his solicitors were duly notified of the hearing date and although he was represented at the hearing, his was a case where the issue of the credibility of his account was highly material to the decision whether he qualified as a refugee or as a beneficiary for international protection. The statement from him dated 29 July was relatively brief as regards his claimed experiences in Iran. The case was one therefore where there was a premium on oral testimony being heard if that was at all possible.
8. For the above reasons, I conclude that there was a procedural error in the conduct of the appeal requiring me to set aside the decision of First-tier Tribunal Judge Carroll. I remit the case to the First-tier Tribunal to be heard by a judge other than Judge Carroll. I would underline that if for any reason the appellant fails to attend the next hearing he must expect that the judge will have to assess his case on the basis of the written evidence such as it is.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: 21 January 2018



Dr H H Storey
Judge of the Upper Tribunal