



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02051/2017

THE IMMIGRATION ACTS

Heard at Birmingham  
On 11 May 2018

Decision & Reasons Promulgated  
On 23 May 2018

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

AM  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mr D Mills (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is the claimant's appeal to the Upper Tribunal from a decision of the First-tier Tribunal ("the tribunal") which it sent to the parties on 7 April 2017. The tribunal's decision was to dismiss his appeal against a decision of the Secretary of State, which had been taken on 9 February 2017, to refuse to grant him international protection.

2. The tribunal hearing had taken place on 28 March 2017. It is clear that a matter of days before that the claimant had been told by his then legal representatives that they would no longer act for him. But he had seemingly been confused and, even on the date of the hearing, he had seemed to think that a solicitor might attend to represent him. However, it was clarified that that was not going to happen and the hearing proceeded with the claimant being unrepresented. The tribunal's reasons for deciding to proceed, rather than to adjourn to enable the claimant an opportunity to secure alternative representation, are set out at paragraphs 2 and 3 of its written reasons of 4 April 2017 (sent on 7 April 2017). The grounds of appeal to the Upper Tribunal amounted to a challenge to the tribunal's decision to proceed rather than to adjourn, on fairness grounds.
3. Before me Mr Mills referred to what had been said by the Upper Tribunal about adjournments in *Nwaigwe (adjournment: fairness)* [2014] UKUT 00418 (IAC). He said he would concede that the tribunal ought to have adjourned on fairness grounds given the late withdrawal of representation. So he invited me to set aside the tribunal's decision and remit for a complete rehearing. The claimant, of course, did not oppose that proposed course of action.
4. I accept Mr Mills freely given concession as being a fair and reasonable one. My doing so is not intended to amount to any criticism of the tribunal whatsoever. It is apparent that it considered the issues raised by the appeal most carefully and that, having taken the decision to proceed, it then did its best to ensure that the claimant was not disadvantaged through lack of representation. But it cannot be said that representation might not have made a difference to the outcome. The tribunal did not have specific regard to the principles set out in *Nwaigwe* regarding the way in which adjournment requests are to be considered. So, and in light of the concession, I have decided to set aside the tribunal's decision. My having done so, remittal is the proper course so as to put the claimant back in the position he would have been in had an adjournment been granted.
5. I have set out some brief directions below which will hopefully assist to some extent with the rehearing. The claimant, as I stressed to him at the hearing, should do his best to obtain legal representation as soon as possible. But if he is not able to do that it may well be the case that the tribunal will have to conduct the rehearing in the absence of any such representative. But the point is he will by that stage have had an opportunity to seek representation and will be aware that, if he cannot find a representative, he will have to represent himself. So, if it does come to that, he will not be taken by surprise in the way he seems to have been at the previous tribunal hearing.
6. This appeal to the Upper Tribunal then is allowed on the basis and to the extent explained above.

**DIRECTIONS FOR THE REHEARING:**

- A. There shall be a complete rehearing of the claimant's appeal. That rehearing shall be conducted by the First-tier Tribunal but it shall not be listed before Judge R Hopkins.
- B. The rehearing shall take place at the Birmingham Hearing Centre or such other venue as might be thought to be appropriate. The claimant shall be provided with a Pushtu speaking interpreter at the rehearing.
- C. None of the findings and conclusions of the tribunal as contained in its written reasons of 4 April 2017 shall be preserved.

## **DECISION**

The decision of the First-tier Tribunal which it sent to the parties on 7 April 2017 involved the making of an error of law and is set aside. In consequence, the case is remitted for a complete rehearing before the First-tier Tribunal.

**Signed**

**M R Hemingway  
Judge of the Upper Tribunal  
17 May 2018**

**Dated**

## **ANONYMITY**

The First-tier Tribunal granted the claimant anonymity. I continue that grant under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No report of these proceedings in whatever form shall identify the claimant or any member of his family. Failure to comply may lead to contempt of court proceedings.

**Signed**

**M R Hemingway  
Judge of the Upper Tribunal  
17 May 2018**

**Dated**