



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number:
PA/03015/2017

THE IMMIGRATION ACTS

**Heard at: Columbus House,
Newport
On: 30 April 2018**

**Decision & Reasons
Promulgated
On : 4 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

SA

(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr D Paxton, Counsel instructed by Asylum
Justice

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

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Boyes in which he dismissed the appeal of the Appellant, who claims to be a citizen of Iran, against the Secretary of State's decision to refuse asylum and issue removal directions.

2. The application under appeal was refused on 9 March 2017. The Appellant exercised his right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Boyes on 9 June 2017 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge Gillespie on 13 October 2017 in the following terms

The learned First-tier Tribunal Judge held the hearing in the absence of the Appellant. He made a finding that notice of hearing had been served upon the Appellant at the given address of the service.

There is indeed a notice of hearing showing apparent service by post at an address given as that for the Appellant. There is no service, however, upon any legal representatives, notwithstanding that at the time of the service of notice of hearing, the Appellant did have legal representation and this fact must have been known to the Tribunal, since these legal representatives had secured the transfer of the hearing from Glasgow to Newport. The First-tier Tribunal Judge was apparently unaware of the involvement of these representatives, he stated that the representatives had withdrawn from acting. This, however, is a misunderstanding of events. It is previous representatives, those who acted before the present representatives, who had apparently withdrawn at a time when the hearing was scheduled to be in Glasgow.

In the event, there appears to be arguable risk of procedural unfairness in that the appeal was determined in the absence of the Appellant or his representatives, in circumstances when it was perceived that the Appellant had failed to engage with the Tribunal, notwithstanding the written request by new representatives that the matter be transferred from Glasgow to be heard in Newport.

3. By a rule 24 response dated 21 November 2017 the Respondent opposed the Appellant's appeal submitting that the Judge directed himself appropriately. The Respondent asserts that in the absence of any information from the Tribunal regarding an adjournment the Appellant should have attended the hearing. The Appellant, submits the Respondent, did not have representation at the time of the hearing as the letter from Asylum Justice only outlines that they would have represented him if the proceedings were transferred to Newport. The Tribunal was entitled to proceed.

Background

4. The history of this appeal is detailed above. The Appellant claims to be a citizen of Iran born on [] 1993 and to have left Iran travelling via Turkey and unknown countries to the United

Kingdom where he arrived in July 2015 and claimed asylum shortly after arrival. The Appellant claimed to fear persecution in Iran because of his involvement with the Kurdistan Democratic Party of Iran (KDPI).

5. The Respondent conducted a screening interview with the Appellant on 5 August 2015 and a substantive interview on 15 June 2016. Following this a language analysis took place on 1 September 2016. The Respondent refused the Appellant's claim on 14 March 2017 and in doing so did not accept that the Appellant came from Iran asserting that he was in fact a national of Iraq. It followed that the Respondent did not accept any of the core facts of the Appellant's account.
6. At the hearing on 9 June 2017 there was no appearance by the Appellant. The Judge noted that those he had instructed had come off the record prior to the hearing and was satisfied that notification of the hearing was made to the Appellant's last known address. In the circumstances the Judge decided that it was in the interests of justice to hear the appeal noting that the Appellant had not engaged with the Tribunal at all.
7. The Judge dismissed the appeal finding, essentially in agreement with the Respondent's refusal letter, that the Appellant was not a national of Iran and that his version of events happening in Iran was not true.

Submissions

8. For the Appellant Mr Paxton submitted a skeleton argument and referred to the grounds of appeal. In answer to my question he did not know why the appeal had originally been listed in Glasgow and assumed that this was an error on behalf of the Tribunal. Mr Mills agreed saying that the only address on the Home Office record was in Swansea. Mr Paxton continued saying the test is one of fairness. If the Judge had seen and noted the letter from Asylum Justice dated 3 May 2017 alarm bells would have rung. From the decision of the First-tier Tribunal it is apparent that the Judge was not aware of the letter. If he had been aware enquiries would have been made. His decision to proceed was on the basis of a misunderstanding of facts. The letter makes it clear that Asylum Justice had been instructed and were prepared to represent him in his asylum appeal.
9. For the Respondent Mr Mills referred to the rule 24 response. He said that notice of hearing was sent to the Appellant and the onus was on him to contact the Tribunal and to appear on the

specified date. There is no lack of fairness. Mr Mills argued that the letter from Asylum Justice does not confirm that they will represent him, it merely says that they would be prepared to represent him if the matter were transferred to Newport and listed not to be heard before 2 June 2017 to give them time to prepare.

10. I said that the appeal would be allowed and reserved my written decision. It was clear that the Judge had failed to note the letter from Asylum Justice of 3 May 2017 and indeed that the Tribunal had not responded to that letter. It appeared that the matter had been adjourned from Glasgow to be heard in Newport on 9 June 2017 and in those circumstances, in accordance with their letter, that Asylum Justice would have represented the Appellant. However, in the absence of response by the Tribunal to that letter Asylum Justice did not know that the matter had been listed for hearing on 9 June 2017 so could hardly be criticised for failing to attend.

Decision

11. The single issue in this appeal is whether it was procedurally unfair for the Judge to proceed with the hearing on 9 June 2017 in the absence of the Appellant and his representatives.
12. A perusal of the file is illuminating. This Appellant appears to have been living in South Wales throughout his time in United Kingdom. Certainly he was interviewed in Cardiff on 15 June 2016 and, according to Mr Mills, Home Office records give his address in Swansea throughout. The Appellant was represented at asylum interview by a firm of solicitors based in Cardiff. However, the refusal letter, sent from UKVI in Cardiff bears no address and does not appear to have been sent directly to the Appellant. Instead it was sent to the Appellant's legal representatives in Cardiff with a covering letter from UKVI dated 15 March 2017 asking them to serve it upon their client at the earliest opportunity. Mr Mills suggested to me that this was normal practice where an Appellant is legally represented. If it is normal practice it is not a practice that I have ever noted before. Perhaps the answer is in the letter of 15 March 2017 which states:

"we would also request that following your providing this decision to your client that you inform the General Practitioner that the decision has been served and request that they make a follow-up welfare call to your client to ensure they are offered any support required."

The letter reveals that self-harm issues had been reported to UKVI as long ago as August 2015. It seems clear from this that UKVI were treating the Appellant as a vulnerable individual. Mr Paxton referred to the letter of 3 May 2017 being one that should have caused alarm bells to ring. It would perhaps have been appropriate for him to refer to the letter 15 March 2017 in this light.

13. Following service upon them of the refusal notice the Appellant's legal representatives submitted the notice of appeal on his behalf confirming his address in Swansea and their address Cardiff. It is dated 24 March 2017. By letter dated 31 March 2017 the Tribunal dispatched notice IA28 to the Appellant in Swansea, his legal representatives Cardiff and the Home Office Presenting Officer's unit in Cardiff giving notice of prehearing review on April 19, 2017 and final hearing on May 3, 2017. The prehearing review and final hearing were listed in Glasgow. I can see absolutely no reason why the Tribunal would have listed a case where all parties, including a vulnerable Appellant, are based in South Wales at a hearing centre in Glasgow.
14. The prehearing review was conducted in Glasgow by Designated Judge McDonald. The record notes that no reply notice had been received and standard directions should be issued along with a standard letter "*English/Welsh agents not entitled to conduct in Scotland*". A standard letter dated 21 April 2017 was duly sent by the Tribunal in Glasgow to the Cardiff solicitors. The effect of this was that the Appellant's legal representatives were barred from representing him before the Tribunal two weeks before final hearing. It is perhaps not surprising that these legal representatives wrote to the Tribunal in Glasgow by letter dated 26 April 2017 stating that they were no longer representing the Appellant.
15. On receipt of this letter on 27 April 2017 it appears that the Tribunal in Glasgow noted that there was a fundamental problem and the hearing of 3 May 2017 was adjourned at the Tribunal's own volition and transferred to Newport noting that the representatives were no longer acting. It does not appear to have occurred to the Tribunal that the reason the representatives were no longer acting may well have been the Tribunal told the representatives that they were not able to represent. In any event the hearing date of 3 May 2017 was adjourned and notice to this effect was sent to the Appellant from Glasgow on 28 May 2017 and on 2 May 2017 further notice was sent to the Appellant from the Tribunal in Newport giving a hearing date 9 June 2017.

16. The next event of note is the letter from Asylum Justice faxed to the Tribunal in Glasgow on 3 May 2017. It is unclear when this fax reached the court file in Newport but if it has been filed chronologically then it did not arrive until after the hearing took place on 9 June 2017. It appears on the file after the notice of decision was dispatched on 21 June 2017.
17. It is clear from this letter that by 3 May 2017 Asylum Justice had been instructed by the Appellant and proposed to represent him. All they asked was that the case should not be listed before 2 June 2017 to enable them to take full instructions. There is no indication that there was any correspondence either from Glasgow or Newport to let Asylum Justice know that their letter had been received and that any action was being taken. There is certainly nothing to suggest to Asylum Justice that a hearing was taking place on 9 June 2017. Although a letter was dispatched to the Appellant on 2 May 2017 confirming the hearing date it is in my judgement quite reasonable for an unrepresented Appellant who does not speak English and who has been defined as a vulnerable to consider that the new representatives instructed by him were dealing with matters.
18. I have gone through matters in some detail above because it is only by doing so that the overall unfairness of proceeding in the Appellant's absence can be shown. The Judge cannot be faulted for not noting the letter from Asylum Justice because there appears to be every likelihood that the Tribunal administration failed to match this letter to the file until after the hearing on 9 June 2017. However as the above shows alarm bells should have been ringing well before then.
19. In my judgement there has been procedural unfairness. The Appellant has not had the opportunity of being heard by the First-tier Tribunal. His appeal is allowed, and this matter is remitted the First-tier Tribunal hearing de novo.

Summary

20. The decision of the First-tier Tribunal involved the making of a material procedural error of law. I allow the Appellant's appeal and as the procedural error prevented the Appellant from being heard by the First-tier Tribunal it is appropriate that this matter is remitted to the First-tier Tribunal for hearing de novo.

Signed:

Date: 1 May 2018

A handwritten signature in black ink, appearing to read 'J F W Phillips'. The signature is written in a cursive style with a large, prominent initial 'P'.

J F W Phillips
Deputy Judge of the Upper Tribunal