



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03540/2018

THE IMMIGRATION ACTS

Heard at Field House
On 7th August 2018

Decision & Reasons Promulgated
On 24th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

OAMA A-Z
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss P Solanki, Counsel instructed by Kingswright Solicitors
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity direction pursuant to the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/260) Rule 14 as this is a protection claim. 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 Appellant. This direction applies, among others, to all parties. Any failure to comply with this direction could give rise to Contempt of Court proceedings.
2. The Respondent refused the Appellant's application for asylum and ancillary protection on 7 March 2018. His appeal against that was dismissed by Judge Pedro following a hearing on 20 April 2018. Judge Pedro's decision is detailed. Numerous findings of an adverse credibility nature are made against the

Appellant. He notes discrepancies that occurred between the Appellant's screening and substantive interviews, and many other matters as well.

Permission to appeal

3. Permission to appeal was granted by Judge Grimmett (15 June 2018). The basis of the application was that the Appellant had complained about the legal service he had been provided with in that in particular a witness statement detailing errors in his screening interview had not been provided for the Tribunal. This amounted, it was said, to procedural unfairness. It was specifically noted by Judge Grimmett, "The Appellant will need to prove a failure of his representatives and to serve copies of the witness statement he refers to on the Respondent and the Tribunal".

Respondent's position

4. The Respondent did not file a Rule 24 notice. In essence Mr Avery says that the Judge made findings available to him on the evidence, there has been ample time to obtain the file from the previous solicitors, and there is no evidence that the complaint has been sent to that previous solicitors as it has been provided by the Appellant himself.

Discussion

5. The directions that were served for this hearing have not been complied with in that the evidence that was referred to by Judge Grimmett was not filed 10 days before the hearing and Miss Solanki's skeleton argument was not filed 3 days before the hearing. Neither of those procedural errors are the fault of Miss Solanki who was only instructed at the weekend, or more importantly the Appellant who is reliant on professional help, and it would be unfair to hold it against the Appellant.
6. An error of law may be found to have occurred in circumstances where some material evidence, through no fault of the First-tier Tribunal, was not considered (**MM (unfairness; E & R) Sudan [2014] UKUT 00105 (IAC)**). I need to be satisfied that there is a risk of serious injustice because of something that had gone wrong at the hearing or some important evidence that had been overlooked (**E v Secretary of State for the Home Department [2014] EWCA Civ 14**). "It is sufficient if an Applicant can establish that there is a real, as opposed to a purely minimal, possibility that the outcome would have been different" (per Mr Justice Simon Brown in **MM**). That is the thrust of what Miss Solanki is saying has happened here.
7. During the course of the hearing Miss Solanki was able to contact the Solicitor who has current conduct of the case. She has produced the complaint that had been made directly by the Appellant to his previous solicitor. Both of those were dated after Judge Pedro's decision and make a variety of complaints about the conduct and handling of his appeal and the preparation of evidence before that. It is not necessary for me to go through all the detail, but if what is


said is true then it would, to me, clearly indicate that he had not been well-served by those previous Solicitors. I must bear in mind, of course, that I have not heard from those Solicitors with an explanation for that, and therefore my comments are purely on the basis of what I have been told by the Appellant. The question for me is whether or not there was a real possibility that, but for any procedural unfairness, there could have been a different decision. Miss Solanki said that her instructing Solicitor has confirmed that only part of the file was given to the Appellant when he terminated his instructions and that part of the file did not contain the attendance notes or statement which is precisely what would have been required for him to establish his case.

8. I am satisfied that it has been established that it is possible there has been unfairness in the way the Appellant had his case prepared initially. He was interviewed and the very first question he was asked by the Respondent was "Are there any changes to your screening interview" and his response was "No". I am told by Miss Solanki that this was because he thought it had already been dealt with. I am aware that Appellants are in an unusually difficult position in that they cannot be expected to know the law or procedure, and are reliant on professional support in ensuring that their case had been properly prepared. I do not have the initial the attendance note taken by the initial Solicitor, or the subsequent statement that the Appellant believed had been prepared. I am satisfied that if the Judge had been made of aware of the issues raised regarding his past representation, there is a real possibility he may have made a different decision in relation to credibility points that he did, as that was where he started his consideration of the evidence and it may have clouded his thoughts on the rest of it.

Decision

Through no fault of the Judge's making, I am satisfied that it has been established that there was a material error of law.

Both representatives agreed that if I found that to be the case, the decision should simply be set aside and remitted to the First-tier Tribunal not before Judge Pedro for a de novo hearing.



Signed:
Deputy Upper Tribunal Judge Saffer
17 August 2018