



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04114/2017

THE IMMIGRATION ACTS

Heard at Birmingham
On 10 July 2018

Decision & Reasons Promulgated
On 10 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

ABDULAAHI MOHAMED HASSAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms U Sood, Counsel, direct access

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

DECISION AND REASONS

1. The appellant was born on 25 December 1992 and is a citizen of Somalia.
2. On 6 July 2017, First-tier Tribunal Judge P J Holmes decided the appellant is not a refugee from Somalia, or that his is otherwise in need of international protection. Judge Holmes also decided the appellant removal from the UK was not unlawful under s.6 of the Human Rights Act 1998.

3. On 17 October 2017, permission to appeal to the Upper Tribunal was granted by Deputy Upper Tribunal Judge Chapman, acting as a Judge of the First-tier Tribunal. She granted permission to appeal on the basis that both grounds were arguable, namely: (i) there had been procedural unfairness in expecting the appellant to represent himself rather than granting him an adjournment to find a lawyer (*Nwaigwe (adjournment: fairness)* [2014] UKUT 418 applied), and (ii) there was a failure to consider the article 3 ECHR issues in light of *Paposhvili v Belgium*.
4. The application for permission to appeal had included a witness statement from the appellant about what had happened during the hearing and a medical letter from Dr Rubina Karim dated 19 July 2018. An administrative failing by the Tribunal meant these documents had not been sent to the respondent prior to the hearing. I arranged for copies to be provided to Mr Mills, who after studying them said he was content to proceed.
5. Neither representative was aware that the appellant had made an adjournment application prior to the hearing. It was appropriate for me to disclose the application and decision so that what happened at the hearing could be seen in context.
6. On 6 May 2017, in response to case management directions, the appellant notified the Tribunal he had been advised by his then solicitors that they would not represent him at the substantive hearing listed and he was looking for another solicitor. A fax from Nottingham and Nottinghamshire Refugee Forum dated 16 May 2017 confirms that the appellant requested an adjournment of the final hearing listed on 31 May 2017 to locate and instruct new legal representatives. The Refugee Forum is not a legal representative. On 17 May 2018, the Tribunal responded, refusing the request because the appellant has had and will have sufficient time to obtain representation.
7. Ms Sood reminded me that the appellant not only represented himself but his health condition meant he was an unusually vulnerable person. His statement indicates he was distressed at the hearing, which would mean it was likely he would have difficulty retaining complex information. The appellant was not given the documentary material held by the judge and was not given an opportunity of going through the documents with an advocate so that he understood the case against him and the issues he had to deal with. The judge's recitation and summarising of the reasons for refusal letter, the grounds of appeal and the interview records was no substitute given the appellant's emotional state.
8. Ms Sood said that although the judge recorded the appellant's allegation that his previous lawyers had done little to help him prepare for the appeal, the judge did not engage with that issue or ask the appellant what steps he had taken to secure legal representation for the appeal hearing. The failure to engage with this issue means it is unclear on what basis the judge recorded the appellant was ready to proceed. This was of particular concern in this appeal because it was unrealistic to expect the appellant to address the medical and country information because of his vulnerabilities and lack of ability in English.

9. Mr Mills argued that it was open to Judge Holmes to proceed. The appellant had not been left at the door of the hearing room without legal representation. He had been notified three weeks before the hearing that his former solicitors would not represent him. The implication from what the appellant has said in his statement is that they would not represent the appellant because he could not pay them.
10. Mr Mills pointed out there is no indication whether the Refugee Forum signposted the appellant to a different lawyer or what steps the appellant took himself. The situation in this case is different from that discussed in *Nwaigwe*. It has to be remembered that the First-tier Tribunal often has to deal with unrepresented appellants and there is appropriate guidance, which it is clear Judge Holmes followed. He treated the appellant as a vulnerable person and was aware of his medical condition.
11. Mr Mills also reminded (as did Ms Sood in her skeleton argument) that the issues in *Paposhvili* had been considered by the Court of Appeal in *AM (Zimbabwe v SSHD)* [2018] EWCA Civ 64. The Court of Appeal found the European Court of Human Rights had not significantly moved the test.
12. Mr Sood responded by reminding me of her skeleton argument and the fact Judge Holmes had failed to consider the questions identified by the Court of Appeal in *AM (Zimbabwe)*.
13. I reserved my decision and reasons, which I now give.
14. I agree with Mr Mills that the situation in this appeal is not one where the appellant was left without legal representation at the door of the hearing. He had over three weeks to obtain further legal representation and to prepare for the appeal hearing. I also agree that there is no evidence about what steps the appellant took to secure a lawyer. There is no indication that he sought a legal aid lawyer or that he found means to pay the fees of a lawyer privately.
15. I recognise that the Tribunal has specific guidance regarding how unrepresented appellants should be assisted in an appeal hearing and what special provisions should be in place to enable vulnerable appellants to participate in the appeal process. First-tier Tribunal judges have special expertise in dealing with unrepresented appellants. Judge Holmes demonstrates his knowledge of the guidance and the proper approach to ensure fairness when at [13] he explains the steps he took to enable the appellant to participate.
16. I conclude that there was no need for Judge Holmes to have asked the appellant why he did not have a lawyer or whether he wanted one.
17. I have considered the findings made and reasons given by Judge Holmes from [15] to [22]. There is nothing to suggest the judge formed any adverse opinion about the appellant because he was unrepresented.

18. For example, at [15] Judge Holmes made a positive finding in relation to the appellant. He found the appellant had a well-founded fear of persecution in Buurweeyn from the Hawiye clan militia because he and his family were members of the Jareer/Bantu people. This indicates the judge took a balanced view of the evidence. At [16], Judge Holmes found the appellant had not misunderstood the question about detention put to him during the screening interview. In so doing, Judge Holmes identifies the difficulties an asylum seeker might face when undergoing a screening interview and the judge explained in that context why he concluded as he did. This indicates the judge looked at the arguments a legal representative might raise.
19. Throughout [17], it is clear the appellant was given the opportunity to reply to the respondent's allegations about the credibility of his accounts. Judge Holmes finds a number of the explanations provided at the hearing to be plausible on their face but he rejects them because there is no reasonable explanation why they were not given during the substantive asylum interview. The fact the appellant was engaged and the judge found some of the explanations potentially plausible indicates the appellant was not disadvantaged by being unrepresented at the hearing. It was open to Judge Holmes to find against the appellant given the actual discrepancy identified in [16].
20. Jumping ahead to [21], Judge Holmes records the appellant's detailed comments made in response to the Presenting Officer's submissions. It is evident the appellant was able to articulate his case and he not only was aware of the issues he had to answer but also the general country background situation. Judge Holmes noted that the appellant's evidence about Somalia was out of date and did not reflect the more recent country guidance issued by the Upper Tribunal, which the judge discussed in [22].
21. Having examined the findings made by Judge Holmes and his reasoning, I do not see how the appellant's position would have been changed had he been legally represented at the hearing since any lawyer would not know what findings would be made. An advocate would have been required to ensure the appellant could present his best evidence and would have made submissions in relation to the plausibility of the appellant's explanations and suggested to the Judge what findings might be made.
22. The evidence of how the appellant participated in the appeal hearing does not identify that he was so anxious or nervous that he was unable to engage with the issues that had to be addressed. The appellant's statement that accompanied the application for permission to appeal confirms Judge Holmes dealt with a difficult situation with appropriate concern for the wellbeing of the appellant, ensuring pauses to the proceedings were given when necessary for the appellant to compose himself.
23. I conclude that on the evidence provided the hearing was fair and effective. Therefore, I find there is no legal error in Judge Holmes not considering adjourning.

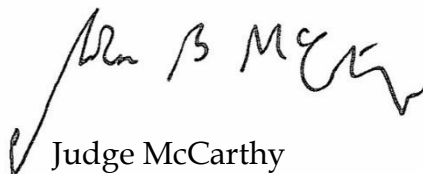
24. As to the second ground, I mention that no error can rest in the post-decision medical evidence. It was not available to Judge Holmes and he cannot be faulted for not considering it.
25. I turn to the second ground, which I must consider in the context of the Court of Appeal's judgment in *AM (Zimbabwe)*. The Court of Appeal identified that the high threshold in *N v SSHD* [2005] UKHL 31 remained although the ambit of article 3 medical cases was no longer limited to deathbed cases. The Court of Appeal recognised the same test applied to cases where the absence of appropriate treatment on return would lead to a serious, rapid and irreversible decline in a person's state of health resulting in intense suffering or to significant reduction in life expectancy. The evidence provided by the appellant did not engage this extension to the case of *N v SSHD* and therefore I find there is no legal error. In other words, I am satisfied the findings of Judge Holmes at [26] are sound, even when read in light of *AM (Zimbabwe)*.
26. As neither ground is made out, I find there is no legal error in the decision and reasons of Judge Holmes and the appeal to the Upper Tribunal is dismissed.
27. I have reviewed whether anonymity should be ordered but recognising the decision and proceedings in the First-tier Tribunal were not anonymised, there is no reason to make such an order in the Upper Tribunal.

Notice of Decision

The appeal to the Upper Tribunal is dismissed.

There is no legal error in the decision and reasons of FtT Judge Holmes and his decision is upheld.

Signed



Date 7 August 2018

Judge McCarthy
A Deputy Judge of the Upper Tribunal