



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06081/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 29 June 2018

Decision and Reasons Promulgated
On 02 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PICKUP

Between

MOHAMMED KHAIRI ARAFAT
[NO ANONYMITY DIRECTION MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms H Naz, instructed by Kingswright Solicitors

For the respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Kelly promulgated 30.10.17, dismissing his appeal against the decision of the Secretary of State, dated 16.5.17, to refuse his protection claim.
2. First-tier Tribunal Judge Mailer granted permission to appeal on 4.12.17.

Error of Law

3. For the reasons set out below I found such error of law in the making of the decision of the First-tier Tribunal as to require it to be set aside and remade.
4. The first issue raised in the grounds of appeal to the Upper Tribunal turns on the refusal of the First-tier Tribunal Judge to grant an adjournment.

5. At [11] the judge noted that the appellant claimed to be feeling unwell and because he wanted to be represented. The application was refused, first because to the judge he appeared fit and well and had not adduced any medical evidence to support his claim to the contrary, and second because the judge considered that there were no obvious prospects of him obtaining representation in the foreseeable future, given his lack of success in doing so during the 16 months that had elapsed since first making his protection claim.
6. The grounds contend that the First-tier Tribunal erred in refusing the adjournment application in the circumstances that the appellant had been represented by IAS Solicitors up and until they closed his file on 17.10.17, just two days before the appeal hearing listed before Judge Kelly. This is evidenced by an email. It is asserted that he was unable to obtain alternative legal representation at such short notice.
7. In granting permission to appeal, Judge Mailer considered it arguable that this amounted to procedural unfairness.
8. The file reveals a fax notification from IAS, the appellant's former representatives, dated 17.10.17, which is stamped as having been received by the tribunal in Bradford on 18.10.17. Evidently this was not drawn to the judge's attention and the suggestion at [11] of the decision that the appellant had done nothing in 16 months to find legal representation was thus inaccurate. There is no explanation from IAS as to why they ceased to represent the appellant but the fact remains that, effectively, up until the day before the hearing the appellant was legally represented. It was only fair that he should be at least allowed the opportunity to seek alternative representation, which he now has.
9. It was likely an inadvertent error of law on the part of the tribunal judge, unaware of the correspondence withdrawing from representation. It is not clear if the letter was placed in the court file before the matter was listed before Judge Kelly but it seems likely not to have been.
10. In the circumstances, the refusal to grant an adjournment to enable him to obtain alternative representation has proven to be procedurally unfair. This unfairness vitiates the findings of fact so that the matter needs to be entirely reconsidered afresh.
11. In the light of this conclusion, it is not necessary to address the grounds claiming that the appellant had sent medical evidence of his illness to the Home Office before the hearing, or the grounds that address the substantive protection claim findings.

Remittal

12. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. The errors of the First-tier

Tribunal vitiate all other findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal.

13. In all the circumstances, at the invitation and request of both parties to relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. The effect of the error has been to deprive the appellant of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

Decision

14. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal at Bradford.



Signed

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable.

A handwritten signature in black ink, appearing to be 'J. Pickup', written in a cursive style.

Signed

Deputy Upper Tribunal Judge Pickup