Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07260/2018

THE IMMIGRATION ACTS

Heard at Field House	**Determination & Reasons Promulgated**
On 24 September 2018	**on 03 October 2018**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

ASIF [R]
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Spurling, of Counsel, instructed by Goodfellows Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a Pakistani national born on 4 April 1988. He challenges the determination of First-tier Tribunal Judge Mill, promulgated on 11 July 2018, dismissing his asylum/human rights appeal.

2. The appellant is an illegal entrant who claimed asylum after he was arrested and detained. His claim is two fold. He maintains that he has converted from Sunni to Shia Islam and also that he is gay.

3. The appellant was released from detention the day before his hearing. He notified the court that he would not be attending and enclosed a medical report on his mental state of mind with his letter. The judge noted that no adjournment had been sought and proceeded to hear the appeal in the appellant's absence.

4. Permission to appeal against the determination of the First-tier Tribunal was granted by Judge Landes on 14 August 2018 on the basis that there may have been a procedural irregularity in proceeding with the appeal in the appellant's absence and without considering the psychological report. The matter then came before me on 24 September 2018.

5. **The Hearing**

6. I heard submissions from the parties. A full note of the submissions is set out in my Record of Proceedings. Essentially Mr Spurling argued that the judge had acted unfairly. He had not considered the issue of fairness when deciding when or not to proceed and failed to acknowledge that the appellant had indicated that he wanted to give evidence when he lodged his notice of appeal. The appellant's letter had not been drafted by a legal professional and it had been written at a time when the appellant was unwell. It did not establish that he had waived his right to an oral hearing. Furthermore, it was extraordinary that the report had not been considered at all. The psychologist's views had an impact upon the credibility of the claim. There were matters which could have been resolved by oral evidence. The appeal should have been adjourned. The decision was flawed and should be set aside.

7. In response Mr Lindsay submitted that the judge was right to dismiss the appeal having found that it was a fabricated claim. The appellant could have submitted a witness statement to address issues that needed clarification. There was no evidence that he wanted an oral hearing. This was simply a ruse to frustrate removal. He had previously been disruptive when attempts to remove him were made. He had also withdrawn an earlier asylum claim and had delayed in claiming asylum. Even if he had sought an oral hearing when he lodged his appeal that did not mean he could not change his mind. There was no requirement for a judge to adjourn of his own accord. Any error in the failure to consider the report was immaterial as it would not have made any difference to the outcome of the appeal.

8. Mr Spurling replied. He submitted that the Tribunal had a duty to consider all the relevant material and the judge had failed to take the

report into account. Whatever the outcome of the appeal, the appellant was entitled to a fair hearing.

9. That completed submissions. At the conclusion of the hearing, I reserved my determination which I now give with reasons.

10. **Discussion and Conclusions**

11. I have considered all the evidence before me and have had regard to the submissions made.

12. Essentially, the issue is whether or not the appellant had a fair hearing. I accept that the appellant's letter did not seek an adjournment and did not indicate in any way that he wished to be present at the hearing. However, as Mr Spurling pointed out, it was written by the appellant himself and without legal advice and it is wholly possible that the appellant, by stating he was unwell and could not attend, meant to seek another opportunity to attend. More worrying, however, is the fact that the judge made no reference at all to the medical report that the appellant submitted with his letter. The Tribunal file confirms it had been received before the hearing and so would have been before the judge. His failure to take it into account is inexplicable. Whether or not it would have made a difference is hard to say but it was a relevant piece of evidence and should not have been disregarded.

13. For these reasons, I can only conclude that the appellant did not have a fair hearing. The determination is unsustainable and the decision is set aside.

14. **Decision**

15. The First-tier Tribunal made errors of law. The decision is set aside. It shall be remade by another judge of the First-tier Tribunal at a date to be arranged.

16. **Anonymity**

17. I have not been asked to make an anonymity order and see no reason to do so.

Signed

Upper Tribunal Judge

Date: 28 September 2018