



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09156/2017

THE IMMIGRATION ACTS

Heard at Field House
On 13 July 2018

Decision & Reasons Promulgated
On 31 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

CT (TRINIDAD AND TOBAGO)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Okoro, Legal Representative, Shaka Services

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals on procedural fairness grounds from the decision of the First-tier Tribunal (Judge Moore sitting at Taylor House on 10 April 2018) whereby the First-tier Tribunal Judge refused an application at the hearing for an adjournment to “*obtain full medical details in relation to the appellant*”, and went on to dismiss his appeal on the merits. In support of the contention that the Judge’s refusal to grant an adjournment was wrong and unfair, the appellant’s representatives have served a supplementary report from a consultant psychiatrist, Dr Louise Guest, which was obtained after the Judge’s decision dismissing the appeal was promulgated.

The Reasons for the Grant of Permission to Appeal

2. On 10 May 2018 First-tier Tribunal Judge JM Holmes granted permission to appeal for the following reasons: *“Although the failure to obtain this evidence until after the hearing is unexplained, it is argued that in the light of Dr Guest’s opinion of 20 April 2018, that unknown to the Judge at the hearing, the appellant was so unwell that he was unfit to give evidence or instructions to his lawyers. In the circumstances it is arguable that the Tribunal unwittingly erred in law, depriving the appellant of a fair hearing.”*

The Rule 24 Response

3. On 25 May 2018 Stefan Kotas of the Specialist Appeals Team settled the Rule 24 Response opposing the appeal. He submitted that the Judge of the First-tier Tribunal directed himself appropriately. The Judge gave careful consideration to the adjournment request at paragraphs [7]-[9] of his determination. In any event it was questionable what the value was of adjourning, given that the evidence adduced post-hearing in the report of 20 April 2018 clearly revealed that the appellant was not fit to give evidence in any event.
4. As to any suggestion that the appellant wished to pursue an Article 3/8 medical claim, given that this was not raised in the grounds of appeal, and given that no application was made to amend the grounds, such an argument should be given no weight. There was medical evidence before the First-tier Tribunal and it was clearly open to the representatives to make such an application prior to the hearing in the First-tier Tribunal. Finally, any such argument would arguably constitute a *“new matter”* under section 85 of the NIAA 2002, and it could not have been considered by the Tribunal without the consent of the Secretary of State, he having not previously considered the matter.

The Hearing in the Upper Tribunal

5. At the hearing before me to determine whether an error of law was made out, I reviewed the evidence that had been placed before the First-tier Tribunal and also the supplementary report of Dr Guest dated 20 April 2018.
6. Mr Okoro, who has acted for the appellant throughout the appeal proceedings, and who appeared before Judge Moore, developed the arguments advanced in the grounds of appeal to the Upper Tribunal. In essence, his argument was two-fold. Firstly, he submitted that the appellant had been deprived of a fair hearing of his asylum claim in the First-tier Tribunal, because he had been denied the opportunity to be cross-examined by a Presenting Officer on his claim that he had a well-founded fear of persecution in his home country at the hands of his aunt or his uncle or his cousins, on account of a land dispute which had first arisen in 1993.
7. Secondly, the medical evidence that had been adduced before the Judge had been solely adduced for the purpose of establishing that the appeal ought to be adjourned, and the Judge ought not to have addressed the merits of an Article 3 medical claim in his subsequent decision. He was concerned that the Judge’s findings on an Article 3 medical claim would prejudice the outcome of a future claim of this nature which the Judge recognised that the appellant might wish to bring in the future.

8. On behalf of the respondent, Mr Tarlow adhered to the Rule 24 Response settled by his colleague.

Discussion

9. The relevant background to this case is that the appellant is a national of Trinidad and Tobago, whose date of birth is 1 March 1965. He claims to have first entered the UK as a visitor on 21 October 1994, and that he overstayed. He says he eventually returned to Trinidad and Tobago some time in 2003. He says that he re-entered the UK as a visitor in May 2004, and it is not disputed by the respondent that on 21 October 2004 he applied for leave to remain as a student. The application was successful, and he was granted leave to remain until 13 April 2005. During the period of his student leave, the appellant claims to have returned to Trinidad and Tobago for a six week family visit in May 2005.
10. After the expiry of his student leave, the appellant overstayed. On 8 December 2014 he was arrested by Wandsworth Police on suspicion of theft and actual bodily harm. When he was arrested, he provided a false identity. On 9 December 2014 he was interviewed by Immigration Officers, and he was served with an IS15A notice as an overstayer.
11. On 27 September 2016 the appellant was served with RED.0001 and RED.003 notices, informing him of his liability to removal from the UK, but also giving him the opportunity to submit any additional grounds he might have for remaining in the UK. On 25 October 2016 the appellant's then representatives served a statement of additional grounds running to nine pages, at the end of which was appended a statement of truth signed by the appellant. He sought to resist removal primarily on the basis of family and private life established in the UK. But at the end of the document, he said that his life in Trinidad and Tobago was in danger because he had converted from Christianity to Islam, and his conversion had not been accepted by his family members and the community, and he had received threats from them. In the final paragraph of the document, he added that he had also been involved in a dispute over the inheritance of his deceased mother's assets. His mother's sisters had unlawfully acquired his mother's estate, and if he went back to Trinidad and Tobago, his mother's sister (singular) would want to kill him or harm him because he was the lawful inheritor.
12. The appellant's human rights application was refused on 9 November 2016. He was given a right of appeal, but he did not exercise it. On 24 February 2017 the appellant was detained under Immigration provisions. He remained in detention for a month or so, and in his subsequent screening interview in July 2017, he said that he had attempted to commit suicide while in detention. He was asked briefly to explain why he could not return to his home country, and he answered that he could not return because his aunt, uncle and a couple of cousins had said that they would get rid of him if he stood in their way with regard to their seizure of his mum's house. His mum had died in 2005, and his aunt had taken the house, and had kicked his little sister out of it.

13. The appellant was interviewed about his asylum claim on 14 August 2017, and on 28 August 2017 the respondent gave her reasons for refusing the appellant's protection and human rights claims, which are recorded as having been first made on 27 February 2017 while he was in detention. His account was considered to be internally inconsistent, incoherent, vague and implausible. It was concluded that his behaviour was one to which sections 8(2), 8(3) and 8(5) of the Asylum & Immigration (Treatment of Claimants etc) Act [2004] applied.
14. On the issue of future risk, it was not shown that he could not access adequate protection from the authorities in Trinidad and Tobago, or that he would be unable to relocate within his home country to avoid the relatives whom he claimed to fear.

The conduct of the appeal

15. The appellant instructed Shaka Services to settle the grounds of appeal to the First-tier Tribunal. After they had lodged the notice of appeal, they were subsequently notified that a pre-hearing review would take place on 5 October 2017 and they were asked to complete a reply notice, which they did on 3 October 2017. They informed the Tribunal that the appeal was ready to proceed, and that there would be two witnesses at the appeal hearing scheduled for 19 October 2017. They also notified the Tribunal that no expert evidence was going to be served.

The first application for an adjournment made on 18 October 2017, the day before the hearing scheduled for 19 October 2017

16. The day before the scheduled hearing of the appellant's appeal, they applied for an adjournment on medical grounds. They served a letter dated 18 October 2017 from a GP stating that the appellant had a very painful shoulder, and so he would not be fit to attend the hearing. The request for an adjournment was granted, and the appeal was adjourned to 10 April 2018.

The Evidence served for the Re-scheduled hearing on 10 April 2018

17. For the purpose of the hearing on 10 April 2018, the appellant's representatives filed a bundle of documents containing a report from Dr Louie Guest, consultant psychiatrist, dated 23 March 2018 and a witness statement from the appellant's girlfriend, ST, dated 6 April 2018. In her report of 23 March 2018, Dr Guest said that the appellant had been under the care of Merton & Sutton Early Intervention Service since November 2017. He had been detained under section 2 of the Mental Health Act from 6 December 2017 until 18 December 2017. (According to ST, he was discharged to her accommodation.)
18. He was referred by his GP on 7 November 2017, having presented with symptoms of first episode psychosis. His treatment with anti-psychotic and anti-depressant medication was long-term and necessary for his stability. He remained symptomatic, and so they anticipated him requiring medication for at least two more years. It was not possible at this state to formulate a robust treatment plan, as he had not responded to treatment so far.
19. Dr Guest went on to comment on a World Health Organisation Report on mental health service provision in Trinidad and Tobago. The report was from 2007. She

said that given that the appellant was suffering from a serious mental illness, it seemed unlikely (given the information in the WHO report) that there would be a ready availability of adequate needs management support in Trinidad and Tobago, in view of the complexity of the appellant's needs. He was not currently mentally well enough to board an aeroplane. He was afraid to use public transport unaccompanied due to paranoid thoughts and persecutory beliefs. His girlfriend accompanied him on all journeys.

The Renewed Application for an adjournment at the hearing before Judge Moore

20. In his decision, Judge Moore gives a detailed account of the adjournment application: the reasons why an adjournment was sought, the grounds of opposition advanced by the Presenting Officer, and his reasons for refusing to grant an adjournment.
21. Although the appellant's representatives have served a supplementary report from Dr Guest with the grounds of appeal to the Upper Tribunal, the grounds of appeal focus on the medical evidence that was before the Judge, not the medical evidence that came later.

Ground 1 – Alleged error in not granting adjournment on basis of available medical evidence

22. The first point taken is that the Judge ought to have granted an adjournment on the basis of the medical evidence in the appellant's bundle, because this showed that the appellant was so ill that he was unable to give instructions to his legal representatives.
23. I do not consider that the medical evidence before the Judge established that the appellant had been too unwell to provide instructions to his legal representatives. Firstly, there had been ample opportunity for the representatives to take a statement from the appellant in the period leading up to 19 October 2017, when it was first envisaged that appeal hearing would take place. There was (and is) no evidence that the appellant was so mentally unwell at this stage that he was not able to give a witness statement. The ground on which the appellant successfully applied for an adjournment of the hearing in October 2017 was that he was suffering from acute pain in his shoulder - not that he was mentally ill.
24. Secondly, although there was clearly a period during which the appellant was unable to give instructions (namely, when he was detained under the Mental Health Act) this situation did not appertain for most of the period leading up to the appeal hearing. It is clear that Mr Okoro was able to take instructions from the appellant as the report of 23 March 2018 from Dr Guest is addressed to Mr Okoro. So he must have had the appellant's co-operation and written authorisation to commission this report.
25. Thirdly, it is not the case that the Judge unreasonably rejected the medical evidence which had been placed before him. The Presenting Officer opposed the adjournment request on the grounds, *inter alia*, that there was no medical prognosis and no reasonable likelihood that the appellant would appear at any adjourned hearing. The Judge did not dispute that the appellant was suffering from some mental illness as set out in the report of 23 March 2018. He observed that this report stated it was

not possible to comment definitively on the appellant's prognosis at this early stage in his psychotic illness, and that it was not possible to provide a detailed formulation as to his mental health condition or its diagnosis.

26. The Judge refused the adjournment for three reasons. The first was that the mental health condition of the appellant was not in the grounds of appeal, and it was thus a new matter. Secondly, it appeared that even if the matter was adjourned, there would be difficulty in getting instructions from "*this challenging appellant*". Thirdly, it was unclear as to how long it would take for a full medical/mental prognosis to materialise. The Judge concluded that, at this stage, any further delay in resolution was not warranted by the grant of an adjournment. I consider that this was a reasonable case management decision on the evidence that was before the Judge, and also having regard to the procedural history.

Ground 2 – whether refusal to adjourn was unfair in retrospect

27. I do not consider that the stance taken by the Judge is retrospectively undermined by the supplementary report of Dr Guest. While she opines that the appellant was unfit to give evidence at the hearing on 10 April 2018, this weakens, rather than strengthens, Mr Okoro's case that the appellant was thereby deprived of a fair hearing of his appeal against the refusal of his asylum claim.
28. The argument that the appellant was deprived of the opportunity to be cross-examined on his asylum claim might have had some traction if there had been a meaningful attempt to pursue the asylum claim at an earlier stage - such as a witness statement being taken from the appellant in which he addressed the asserted inconsistencies in his account of past persecution. But nothing was done in this regard. In addition, his representatives never filed any expert or background evidence in rebuttal of the respondent's alternative case, which is that, even if the claim is taken at its highest (i.e. even if it is assumed that the appellant is telling the truth about various relatives threatening to kill him in order to prevent him from taking back land which they have unlawfully seized from his late mother's estate - as to which there is not a shred of supporting documentary evidence) there are not substantial grounds for believing that the authorities in Trinidad and Tobago would be unwilling or unable to provide the appellant with adequate protection. In oral argument before me, Mr Okoro acknowledged that the appellant's asylum claim rested entirely on his own evidence, and that it was not supported by any external evidence.
29. For the above reasons, I am wholly unpersuaded that the appellant has been a victim of procedural unfairness with regard to the hearing and resolution of his asylum claim. I note that in her supplementary report Dr Guest says that there has been some improvement in the appellant's condition, which raises the possibility of him being fit to give evidence in three months' time (i.e. in July 2018). But I do not consider that this is material, as I consider that the appellant has already had a fair hearing of his asylum claim, and he has not shown that he ought to be afforded another hearing.

Ground 3 – whether procedural irregularity in Judge addressing Article 3 medical claim on the merits after refusing to grant an adjournment to enable further medical evidence to be obtained

30. Mr Okoro submits that the Judge ought not to have considered an Article 3 medical claim, as (a) the medical evidence in the bundle was not introduced for the purpose of supporting such a claim, and (b) the Judge had refused to grant an adjournment on the basis that it was a new matter.
31. It is clear from the contents of the report of 23 March 2018 that it was prepared at Mr Okoro's request, and with the appellant's authority, to support an Article 3 medical claim. Hence Dr Guest consulted a WHO report in order to offer an opinion about the availability of treatment for the appellant's mental illness in his home country. So the argument that the report was only introduced in order to support an adjournment application is not sustainable.
32. It was not inconsistent of the Judge, or procedurally irregular, to refuse to grant an adjournment so that the appellant could obtain further medical evidence to buttress an Article 3 medical claim on the ground that such a claim was a new matter; but to go on nonetheless to consider the medical evidence which was already before him in order to assess and resolve the appellant's appeal against the refusal of his human rights claim.
33. The Judge did not thereby prejudice a future application for leave to remain on mental health grounds which he expressly recognised the appellant might wish to make. It was not unfair of the Judge to find that on the available evidence an Article 3 medical claim was not made out, while also acknowledging that it was open to the appellant to present to the respondent a fresh human rights claim in the future based upon a clearer diagnosis and prognosis of his mental health condition.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Direction Regarding Anonymity - rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 25 July 2018

Deputy Upper Tribunal Judge Monson