



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13014/2017

THE IMMIGRATION ACTS

Heard at Field House
On 26 June 2018

Decision & Reasons Promulgated
On 29 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

S K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Vatish, Counsel, instructed by Lawgate Solicitors
For the Respondent: Miss J Isherwood, Senior Home Office Presenting Officer

Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. 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 original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. This direction has been made in order to protect the Appellant from serious harm, having regard to the interests of justice and the principle of proportionality.

DECISION AND REASONS

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge Juss (the judge) promulgated on 13 March 2018, dismissing his appeal against the Respondent's refusal of his protection and human rights claims, dated 27 November 2017. In essence, the Appellant's case was based on his claimed involvement in a political party in Pakistan. As a result of this he had come to the adverse attention of the authorities and he alleged that there were legal proceedings against him. In support of his claim the Appellant had produced a number of documents including an FIR and an arrest warrant.

The judge's decision

2. For the purposes of the appeal before me the most important aspects of the judge's decision are contained in [8] to [10]. At the hearing before him the Appellant's representative had made an adjournment application on the basis that the Respondent's bundle had not been served, at least not on the Appellant's current representatives. Importantly, this bundle, it transpired, contained a document verification report relating to the FIR and arrest warrant. The application was made because the Appellant and his representatives required time to consider, in particular, the report. It also transpired that there was a second version of this report, the only difference between the two being an amended date (the first bearing the year 2015, the second 2016: the latter being the correct date, it seemed). The judge was satisfied that the actual contents of the two reports were exactly the same. In [9] the judge suggests that the Appellant's representatives had had the original report. On this basis, and together with the fact that the two reports were essentially identical aside from the corrected date, the judge concluded that there was no need for an adjournment to be granted.
3. Having reached his conclusion the judge goes on to consider the Appellant's case, makes numerous adverse credibility findings and ultimately rejects the account in full. Part of that rejection includes a specific finding that the FIR and arrest warrant were both "non-genuine" (see [28]).

The grounds of appeal and grant of permission

4. The grounds are unnecessarily lengthy but the essential point in this case is contained in [1] to [3]. It is said that the judge's refusal to grant the adjournment resulted in procedural unfairness.
5. Permission to appeal was granted by First-tier Tribunal Judge Pedro on 12 April 2018.

The hearing before me

6. At the outset of the hearing I asked the representatives to clarify certain issues for me. It was confirmed that the Respondent's bundle had in fact only been provided to the Appellant's representative on the day of the hearing. It was accepted that the bundle had been served some two weeks earlier, but on previous representatives (it seems as though the Appellant had changed solicitors just prior to the Christmas break and this may have caused some confusion/disruption in the Respondent's service of the bundle.) It was confirmed that the bundle contained the document verification report and that this report had at no time been served on the Appellant or any of his representatives as a separate document.
7. Following this discussion I indicated to the parties that in my view there did appear to be an error of law here, namely that of procedural unfairness by virtue of the refusal to grant the adjournment. In fairness to Miss Isherwood, she did not seek to strongly oppose my preliminary view of the matter. In all the circumstances I did not seek submissions from Miss Vatish.

Decision on error of law

8. There is a material error of law in the judge's decision.
9. I am satisfied that the Respondent's bundle was indeed only provided to the Appellant and his representatives on the day of the hearing. In some circumstances this eventuality would not necessitate the granting of an adjournment. It may be that the Appellant and/or his representatives would have already seen and considered the reasons for refusal letter and any interview record, for example. However, in this case that bundle contained an important additional item of documentary evidence, namely the document verification report. I am satisfied that that had not been served by the Respondent at any time prior to the hearing (at least not on the correct legal representatives). The only indication of its existence was a reference in paragraph 55 of the reasons for refusal letter. I am unclear as to why the judge appears to have believed that the Appellant or his representatives had had a copy of the report in advance (see [9] and [10]). I am satisfied that this simply was not the case. Further, it made no difference to the issue of fairness that the amended report bearing the date of 2016 was in all other respects identical to the first. The point is that this important item of evidence had only been seen by the Appellant and his representatives on the day of the hearing itself.
10. In these circumstances it is clear that fairness required the appeal to be adjourned. The judge's failure to do so constituted a clear error.
11. In my view the error is material because, whilst there are several other adverse findings, specific reliance was placed by the judge on the report when he finds that the FIR and arrest warrant were both "non-genuine" (see [28]).

12. In light of the above the judge's decision is set aside.

Disposal

13. Both representatives were agreed that if there were material errors in the judge's decision, the matter would have to be remitted to the First-tier Tribunal. In the circumstances of this case I agree. With reference to paragraph 7.2 of the Practice Statement, this is a case in which there has been serious procedural unfairness. That unfairness is inextricably linked to the issue of credibility and therefore, remittal is the right course of action. I will issue relevant directions, below.

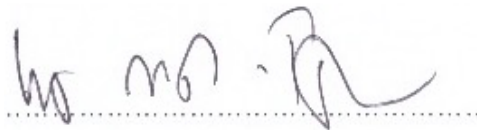
Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside.

I remit this appeal to the First-tier Tribunal.

I maintain the anonymity direction made previously.

Signed

A handwritten signature in blue ink, appearing to read 'W. Norton-Taylor', is written over a horizontal dotted line.

Date: 27 June 2018

Deputy Upper Tribunal Judge Norton-Taylor