



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00667/2018**

THE IMMIGRATION ACTS

**Heard at Royal Courts of Justice
On 20 May 2019**

**Decision & Reasons Promulgated
On 10 June 2019**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

FRANCIS [N]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Khubber, instructed by Turpin & Miller LLP (Oxford)

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Sweden. He has been in the United Kingdom since 2000 when he was aged 4. He appealed to a Judge of the First-tier Tribunal against the respondent's decision to deport him made on 9 October 2018.
2. It had become clear that the only issue of challenge with which I need to deal today is the first ground concerned with the refusal by the judge to adjourn. Other points of challenge were made with regard to his

assessment but in light of the conclusion to which I have come on the adjournment point it is unnecessary to address those matters.

3. The judge noted the following at paragraph 3 of his decision. The appellant did not attend the hearing and was not represented. The Tribunal had been advised by HMP Huntercombe where the appellant was detained that he had refused to leave his cell to be transported to a prison nearer to Birmingham in order to attend the hearing. On the day before the hearing he contacted the Tribunal to say that he was not ready to deal with the matter and wanted time to instruct solicitors. The judge noted that he had been represented in the Crown Court and at the hearing of his last appeal and had had access to legal advice in the past. He noted that the decision was served on 9 October 2018. The appellant had been notified of the hearing date on 6 November 2018. The hearing was on 16 January 2019. The judge considered that the appellant had had ample time to prepare for the hearing and there was no suggestion that he had attempted to instruct solicitors and in the circumstances he was satisfied he should proceed in his absence and resolved to do so.
4. In the grounds of appeal it was argued that the judge had failed to appreciate the level of unfairness resulting from the inequality of arms at the appeal which concerned complex issues of fact and law. A previous appeal on the same issue had been allowed at a time when he had legal representation and he had positively asked for the current appeal not to go ahead in the absence of legal representation.
5. There was also applied a statement from Mr Stern who is a senior immigration caseworker at the appellant's now representatives Turpin & Miller. At a meeting on 24 January 2019 Turpin & Miller were first instructed and at that time the appellant explained to Mr Stern that he had only observed for the first time on 14 January 2019 that there was a hearing date on the 16th. He said he had not received any prior notification of this. A copy was provided of a fax sent to the Tribunal on 15 January 2019 requesting an adjournment to seek legal representation and there had yet been no confirmation of any adjournment or the outcome of the appeal. When he learnt of the hearing date he was able to speak to an intervention worker in the prison from the St Giles Trust who was able to speak to a solicitor to take advice on how to respond to the Tribunal and request an adjournment. Having taken legal advice from the solicitor by phone and with the St Giles Trust worker prepared notes for a fax to send to the First-tier Tribunal the appellant had returned to his cell and by this time the prison transport had already left without him. This, it seems, all took place on 14 January. He said that he did not refuse to attend the hearing but did not know what was happening and was trying to take advice from within the very constrained environment of prison. Subsequently he prepared the fax which was sent on 15 January.
6. I do not consider the judge can be criticised for proceeding, but in light of the evidence that has now come to light, it seems sufficiently clear that

these points were not before the judge when he made his decision to refuse the adjournment request at the hearing. He was not aware that the appellant saying that he had not received notice of the hearing until two days previously, it was not relevant, necessarily that he had had legal advice previously, and the judge was not aware of the circumstances detailed in Mr Stern's statement. In the interests of justice, and bearing in mind the potentially complex legal issues in place and the implications for the appellant of the dismissal of his appeal, I consider that it is in the interests of justice to find that there was an error of law in this case in that there was procedural irregularity and as a consequence the judge's decision is set aside and the matter will have to be reheard de novo by a different judge in Birmingham.

7. No anonymity direction is made.

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

Signed

Date 28 May 2019

Upper Tribunal Judge Allen