



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/07081/2018

THE IMMIGRATION ACTS

Field House
On 4th June 2019
On the Papers

Determination & Reasons Promulgated
On 13th June 2019

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

NK
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Sri Lanka. His appeal against the decision to refuse his protection claim was dismissed by First-tier Tribunal Judge NMK Lawrence in a determination promulgated on the 29th January 2019. Permission to appeal was granted by Judge of the First-tier Tribunal Margaret O'Keefe on 13th March 2019. On 16th April 2019 the respondent conceded that permission should be granted as documents were verified by the respondent after the First-tier Tribunal hearing and the refusal of asylum decision had been withdrawn on 21st February 2019, and asylum granted to the appellant on 4th April 2019.

2. The respondent sought the vacation of the hearing before the Upper Tribunal on 2nd May 2019 in these circumstances, and this application was granted by Lawyer to the Upper Tribunal Sukhi Bakhshi in a decision dated 30th April 2019. The appellant's representative did not wish to withdraw the appeal as they wished to seek wasted costs from the respondent. It was directed by Ms Bakhshi that the parties put forward their written submissions on the appeal being deemed abandoned under Rule 17A of the Tribunal Procedure (Upper Tribunal) Procedure Rules 2008 and also on the issue of wasted costs.
3. I now determine these two issues.

Submissions

4. David Benson Solicitors for the appellant argues in summary that the relevant original documents had been sent to the Further Submissions Unit in Liverpool following grant of permission for judicial review of a refusal to accept further submissions as a fresh claim on 25th January 2018. The judicial review then concluded by consent in February 2018. The solicitors had requested that verification of the documents take place in correspondence with the GLD and also the respondent, but a new refusal of asylum was issued without this having taken place in May 2018 and the appellant appealed. A further request for verification was made in June 2018 at the pre-hearing review in the First-tier Tribunal. On 4th July 2018 Mr John Smith appeared for the respondent at a hearing in the First-tier Tribunal and agreed to personally ensure that the document verification process took place: as a result the appeal was adjourned. At this point Counsel for the appellant raised the issue of wasted costs. The appellant's solicitors contacted the PO Unit in Birmingham on many occasions between July 2018 and October 2018 when the case was relisted for hearing. When the matter was next listed, on 10th October 2018 the verification had not taken place and the respondent applied to adjourn the hearing, and this granted despite being opposed by the appellant's counsel on the basis that it was proposed to verify via a different route, namely the NDFU, and this was not believed to be the appropriate organisation to conduct the verification. In January 2019 the respondent applied to adjourn the hearing again on the basis that the NDFU could not verify the documents and so there was a special request made and granted to carry out verification in Colombo. This request for an adjournment was refused by the caseworker and at the hearing by Judge of the First-tier Tribunal NKM Lawrence. It was said that the documents had been sent to the wrong email address and so had not been received by the right person at the British High Commission and so a further period of three weeks was required. The appellant's Counsel agreed to this adjournment request as it was for a short period.
5. It is argued that as the appellant's solicitors have been trying to ensure that the documents were verified since January 2018, and this was all that was needed to prove that the appellant was entitled to refugee status that the respondent had acted unreasonably in failing to ensure this was done and this had incurred the appellant considerable costs of three hearings before the First-tier Tribunal and

then in challenging the decision of Judge Lawrence. The adjournment requests in writing were not made in sufficient detail to be granted and thus required hearings, and there was an error with respect to the email address. A statement of costs for £11,155 of solicitors' costs plus £2937.35 of counsel's fees is submitted.

6. In reply the respondent argues that he has behaved reasonably and competently throughout. The presenting officer had only undertaken to make his best efforts to ensure that they were verified in July 2018. There is no general duty to verify documents on the respondent, see VT (Article 22 Procedures Directive – confidentiality) Sri Lanka [2017] UKUT 368. It was not unreasonable to have tried to verify the documents via the National Document Fraud Unit in October 2018. In October 2018 directions said that the result of checks should be served by 17th December 2018 and the respondent sought to use the Immigration Enforcement International in Sri Lanka direct checking option. However, it was due to a technical issue that the request was not received by this body, which was not the fault of the respondent.
7. The respondent also challenges the sum claimed. It is said that this is excessive and unreasonable. There is, for instance, 4 days work on letters and emails to the respondent and appellant in a 10 month period, which is £7000. There is also work which was done prior to lodging the appeal which is outside of the proceedings.

Conclusions

8. I am satisfied that the requirements of procedural fairness to the respondent have been complied with in dealing with this application for wasted costs. I am guided by the decisions in Awuah and Others (Wasted Costs Orders) [2017] UKFtT 555 (IAC) and Cancino [2015] UKFtT 00059. It is essential that it is shown that the wasted costs were caused by the substandard behaviour of the respondent, and that a properly precise amount is claimed for this loss. It is necessary to consider whether there is a proper explanation for the conduct under scrutiny. On the facts of this case the question is whether the respondent has acted unreasonably in the defence of this appeal, or put another way whether the presenting officers and their fellow colleagues in the document verification process acted as reasonably competent civil servants.
9. I find that this is not an appropriate case to make a wasted costs order. I fully appreciate the frustration of the appellant and his solicitors who clearly worked as hard as they could to try to obtain the verification of the key documents through the processes of the respondent in a timely fashion. It is clear that in the end this process took a period of some 13 months to achieve this. It would have been desirable if this had not been the case. However, the respondent was not under a duty to verify the documents at all. It was also not a case where the respondent pursued the appeal once he had the information which showed that the appellant was entitled to refugee status. Attempts were made to verify the documents through different channels, and one of the channels, the final and successful one, involved an IT glitch which meant that an overseas team did not receive the

request and then when it was received needed more time to carry out the process as they had to attend a court located some distance from Colombo. There were attempts made to adjourn the hearings without the parties attending the First-tier Tribunal but those attempts were refused by the First-tier Tribunal who perhaps understandably needed to hear from the parties directly to grant the adjournments.

10. I do not believe that there is any evidence that any of the presenting officers or others involved were anything other than reasonably competent civil servants. It might be that that the arrangements for checking documents could be improved or streamlined but this might have resources implications and so may not be possible and I do not find that the costs of the appellant were caused by unreasonable behaviour by the respondent.

Decision:

1. There is no order for wasted costs.
2. The appeal is treated as finally determined under Rule 17A(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) 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. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Signed: *Fiona Lindsley*
Upper Tribunal Judge Lindsley

Date: 4th June 2019