



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/07503/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 4 December 2018**

**Decision & Reasons
Promulgated
On 19 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

**A A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Bhuiyan, Legal Representative
For the Respondent: Mr E Tuffan, Home Office Presenting Officer

DECISION ON ERROR OF LAW

1. The appellant has been granted permission to appeal the decision dismissing his appeal against the respondent's decision to refuse to grant him asylum in the UK.
2. The appellant's appeal was listed for hearing on 13 July 2018. The appellant did not attend the hearing. He was represented by Mr Ali who

applied for an adjournment on his behalf. The judge indicated at paragraph 7 that the grounds for the application were; firstly, that the appellant had not received the respondent's bundle, secondly, that he had not received the verification report and thirdly, the appellant has been hospitalised, evidence of which will be forwarded. Mr Ali said he had been instructed by his solicitor/supervisor to seek the adjournment.

3. The judge asked Mr Ali to inform the Tribunal as to when it was that the Appellant instructed his firm, to which he replied that he did not know. The judge said he asked why, since the appeal was lodged way back in June 2018, the appellant had not chased either the respondent or the Tribunal for a copy of the respondent's bundle, to which Mr Ali replied that he did not know. The judge said that in response, the Home Office Presenting Officer was willing to offer his bundle to Mr Ali for perusal.
4. The judge then indicated that he was not prepared to adjourn. On this indication Mr Ali withdrew from the proceedings.
5. At the hearing before me Mr Bhuiyan submitted a "Confirmation of Attendance" from a Nurse Practitioner stating that the appellant had, on 13 July 2018, visited the Barkantine Walk-In-Centre, 121 Westferry Road, London E14 8JH. The Nurse Practitioner confirmed that the appellant attended the walk-in clinic for medical treatment. She did not indicate what treatment the appellant had received. Mr Bhuiyan also submitted a letter from Dr Anne Nida a GP volunteer at the Doctors of the World to the registering GP at East One Health in London E1. The letter which is dated 15 August 2018 stated that the appellant who is an asylum seeker from Bangladesh was seen because he had a knee pain with intermittent swelling. The pain is severe at night and wakes him up twice at night. Dr Nida said the appellant was going to make an appointment with a GP to discuss investigation and treatment.
6. I did not find any of the medical evidence satisfactory given that the explanation that Mr Ali gave to the judge was that the appellant had been hospitalised and that was why he could not come to the hearing. That explanation was inconsistent with the medical evidence submitted to me.
7. In any event, I accept Mr Bhuiyan's submission that the judge did not give a reason for not adjourning the hearing. I also find that it was not for the appellant to chase the respondent or the Tribunal for a copy of the respondent's bundle. In the respondent's Rule 24, paragraph 3(iv) said that Home Office records show that the respondent's bundle was sent to the appellant's representatives and the Tribunal on 10 July 2018. This was rather tight given that the hearing was due to take place on 13 July 2018. Mr Tuffan said that the respondent's bundle is usually sent either by post or electronically. He was not able to tell me how the respondent's bundle in this case was sent to the appellant's representative.

8. There was also the issue of the DVR (the document verification report) at pages E71 and E72 of the respondent's bundle which I find the appellant would not have had sight of because he did not receive the respondent's bundle. Mr Bhuiyan said that the DVR alleged that the 2010 document was not a genuine document. He said there was a further document which the appellant had submitted dated 2013 for which there was no DVR. I told him that this was a matter for the respondent. The appellant could deal with this matter at the hearing.
9. Despite the inadequacy of the medical notices submitted by the appellant, I find that the judge erred in law for failing to give reasons for not adjourning the hearing. The judge's decision to proceed with the hearing in the absence of the appellant meant that the appellant was deprived of a fair hearing.
10. Accordingly, the judge's decision cannot stand. It is set aside in order to be remade.
11. Mr Bhuiyan said that the appellant will need a Bengali/Sylheti interpreter at the remitted hearing.
12. The appeal is remitted to Hatton Cross for rehearing by a judge other than First-tier Tribunal Judge Hussain.

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: 19 December 2018

Deputy Upper Tribunal Judge Eshun