



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/07725/2018**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester

On 9 January 2019

**Decision & Reasons
Promulgated**

On 30 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**ROGER [K]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss E Mottershaw (counsel) instructed by Greater Manchester Immigration

For the Respondent: Mr C Bates Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Mather promulgated on 7 August 2018, which dismissed the Appellant's appeal on all grounds.

Background

3. The appellant is a citizen of the Democratic Republic of the Congo who was born on 28 July 1974. The appellant arrived in the UK on 15 November 2017 and claimed asylum on arrival. On 7 June 2018 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Mather ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 26 September 2018 Tribunal Judge Nightingale gave permission to appeal stating inter alia

"3. The grounds are arguable. The Judge's conclusions, from paragraph 23, arguably conflate plausibility with credibility and arguably contain insufficient reasons for the wholesale rejection of the appellant's account. It is also arguable that the Judge erred by failing to make any finding with regard to the appellant's departure on a false passport & any possible risk arising from that departure. It is also arguable that the Judge erred in his consideration of the letter from the UDPS/UK containing details of the checks and verification which have been made of the appellant's claim.

4. It is also arguable that the Judge erred in refusing the adjournment application as the appellant had been awaiting a decision on the grant of legal aid which has only been confirmed shortly before the hearing. The Judge was aware that the appellant would be provided with free legal representation, including the translation of a document said to come from the DRC authorities, if the appeal was adjourned. It is arguable that the Judge did not properly address the issue of fairness in accordance with Nwaigwe.

5. Permission is granted on all grounds pleaded."

The Hearing

5. After Miss Mottershaw moved the grounds of appeal, Mr Bates told me that he would have difficulty resisting the appeal. He told me that the Judge applied the wrong test in considering the question of adjournment. He agreed that the Judge's findings of fact require greater reasoning. He referred, in particular, to the final sentence of [27] and said that there was an inadequacy of findings in relation to credibility. Both Miss Mottershaw and Mr Bates asked me to remit this case to the First-tier Tribunal to be determined afresh.

Analysis

6. The appellant was unrepresented before the First-tier Tribunal. At [16] and [17] the Judge records that the appellant's previous representatives requested an adjournment in advance of the hearing, and that request was refused. At [18] the Judge records that the appellant asked for an adjournment before the hearing started because he had (just) secured representation and his new representatives require further time to prepare. The Judge says that he refused the adjournment for the same reasons that the written adjournment request made by the appellant's agents on 6 July 2018 had been refused.

7. In Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) it was held that if a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the First-tier Tribunal acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing?

8. The Judge makes no reference to either Nwaigwe or to the test of fairness. The Judge does not say what test he applied in considering the appellant's request to adjourn. The appellant had secured representation and has documentary evidence to produce. Some of those documents had to be translated. This is a protection claim. The respondent's decision was made on 7 June 2018. The hearing before the First-tier Tribunal was on 23 July 2018, just seven weeks after the respondent's decision was made.

9. The refusal of the adjournment creates procedural unfairness and is a material error of law.

10. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

11. At [22], in 17 subparagraphs, the Judge sets out a summary of the appellant's claim. The Judge's findings of fact take up only half a page of an 11 page decision. They are concentrated between [24] and [28] of the decision. At [24] the Judge says only

"I do not accept the appellant to be a credible witness."

12. The Judge then takes that solitary sentence as his theme, which he repeats at [25], [26], [27] & [28] of the decision. The Judge does not properly say why he does not accept the appellant to be a credible witness. A fair reading of [24] to [28] creates the impression that the Judge has conflated plausibility with credibility.

13. The Judge's findings of fact are inadequately reasoned. That is a material error of law. I set the decision aside

14. The appellant has now secured representation. In advance of today's hearing his representatives candidly conceded that they have not had sufficient time to prepare for the second stage of this hearing. I have found that the Judge's decision must be set aside because his fact-finding exercise was inadequate. I cannot substitute my own decision. Further fact-finding exercise is necessary.

Remittal to First-Tier Tribunal

15. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

16. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

17. I remit the matter to the First-tier Tribunal sitting at Manchester to be heard before any First-tier Judge other than Judge Mather.

Decision

18. The decision of the First-tier Tribunal is tainted by material errors of law.

**19. I so
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determi**



**romulgated on 7 August
First-tier Tribunal to be**

Signed
January 2019

Date 15

Deputy Upper Tribunal Judge Doyle