



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

Appeal Number: PA/12962/2018

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre **Decision & Reasons Promulgated**

On: 18th June 2019

On: 21st June 2019

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**HBN
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: M , Adam Solicitors

For the Respondent: Mr A. McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iran born on the 9th July 1992. He appeals with permission the decision of the First-tier Tribunal (Judge Malik) to dismiss his appeal against a decision to refuse him leave on protection grounds.
2. The single ground of appeal in this appeal is that the Appellant has been deprived of an opportunity to put his case before the First-tier Tribunal and so has suffered a procedural unfairness. The position, in short

summary, is that when the appeal was called on before Judge Malik there was no appearance by the Appellant. Having satisfied herself that the notice of hearing had been properly served, Judge Malik heard submissions from Mr Sadiq who appeared on the Appellant's behalf. Mr Sadiq informed the Tribunal that he had been receiving regular instructions from the Appellant who had recently attended at his office and assured him that he would be at court. Mr Sadiq had tried to contact the Appellant but to no avail. He found his absence to be "inexplicable". Judge Malik proceeded in the Appellant's absence and dismissed the appeal, finding the account of Kurdish political activity to be contrived for the purpose of claiming asylum.

3. The grounds assert that there was simply a mix up on the day. The Appellant had in fact been at court at the appointed time, but had for whatever reason not 'signed in' at reception and not been called into court. This came to Mr Sadiq's attention as he left the building for the day, and he banged into the Appellant on the way out. Court staff confirmed that the Appellant had been in the waiting room since well before 10.00am.
4. I am satisfied that it would be appropriate to remit this matter so that the appeal can be heard *de novo* in the First-tier Tribunal with the Appellant having an opportunity to give his evidence on matters crucial to his case. As Mr Sadiq rightly observed, the Appellant had until that point pursued his protection claim with diligence, and this Tribunal is well aware that Mr Sadiq is a very competent and experienced representative who would not intentionally leave his client sitting in reception for no good reason. I find that the procedural irregularity in this case is of the kind discussed in MM (unfairness; E & R) Sudan [2014] UKUT 00105 (IAC): that is to say that it is nobody's fault, and certainly not that of the judge, but fairness nevertheless requires that the decision be set aside.

Decisions

5. The determination of the First-tier Tribunal involved the making of an error of law and it is set aside.
6. The decision in the appeal will be remade following *de novo* hearing in the First-tier Tribunal by a judge other than Judge Malik.
7. This is a live protection claim. I therefore consider it appropriate to make an order for anonymity in the following terms:
8. "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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Upper Tribunal Judge Bruce
18th June

2019