



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06346/2019**

THE IMMIGRATION ACTS

**Decided under rule 34
On 3 June 2020**

**Decision & Reasons Promulgated
On 9 June 2020**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**ZI
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Representation by way of written submissions:

For the Appellant: Lawrence and Associates; no submissions received

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Background

1. This appeal comes before me following the grant of permission to appeal by Upper Tribunal Judge Gill on 19 January 2020 in respect the determination of First-tier Tribunal Judge Greasley, promulgated on 11 November 2019 following a hearing at Hatton Cross on 6 December 2019.

2. The appellant is a Pakistani national born on 4 February 1996. He entered the UK as a businessman in 2005 and claimed asylum the following year. This was refused but the appellant did not embark and after he was encountered by the authorities he made further representations. He failed to attend all the asylum interviews that had been scheduled and maintained that he only knew of the last one and that he had medical problems preventing him from attending. He did not give oral evidence to the First-tier Tribunal for the same reason. His claim is that is bisexual and cannot return home to his wife and family because they had disowned him and because he would be persecuted.
3. A pre-hearing review on the papers was scheduled for 19 July 2019 at Hatton Cross with a substantive hearing date set for 2 August 2019. The appellant's representatives sought an adjournment to obtain the appellant's papers from his previous representatives and to access his medical records. The request was granted and the appeal was adjourned for just over three months to 6 November 2019. On 4 November 2019, an application was made for a seven month adjournment "*to see if our client's condition improves to the extent that he may be able to give evidence*". A psychiatric report had been obtained which suggested that the appellant might be suffering from pre-senile dementia and would be reviewed in six months when a confirmatory diagnosis could be given. The application was refused on 5 November 2019.
4. The application for an adjournment, this time for six months, was renewed at the hearing before the First-tier Tribunal. It was refused and the appellant's representative then made no submissions. The matter proceeded on the basis of submissions from the respondent and the appeal was later dismissed.
5. Although the appellant sought permission to appeal on three grounds, the first two pertaining to the judge's refusal to grant an adjournment, permission was only granted on the third ground which was the judge's consideration of an unsigned witness statement.
6. The matter came before me at Field House on 16 March 2020. The appellant attended the hearing but there was no appearance by the appellant's representative. An email was received by the Tribunal to say that the representative's wife was unwell and he had to stay at home with their child. There was no objection raised by the Presenting Officer to an adjournment on that basis and the appellant was informed that he need not attend on the next occasion.

Covid-19 crisis

7. Before the matter could be re-listed, the UK went into lockdown due to the coronavirus pandemic. On 30 April 2020 directions were sent to the parties in the light of the need to take precautions against the

spread of Covid-19. The parties were invited to make submissions on the error of law issue and to put forward any reasons for why they considered the matter could not be decided without a hearing.

8. The respondent replied to the directions on 19 May 2020 confirming that she did not oppose the appellant's challenge. To date the Tribunal has not received any response from the appellant's representatives. As the deadline for compliance with directions by the appellant expired on 14 May 2020, and as no application for an extension of time has been made by his representatives, I now proceed to determine the matter.

Discussion and Conclusions

9. I have considered all the evidence and the submissions made.
10. There has been no further challenge to Upper Tribunal Judge Gill's decision to refuse permission to appeal on the grounds put forward in respect of the refusal of the adjournment by the First-tier Tribunal. By virtue of these proceedings the appellant has now achieved the six month delay he sought and so the point is academic in any event.
11. The ground considered arguable by Judge Gill related to Judge Greasley's consideration of the appellant's witness statement. Although contained in the appellant's bundle, it is unsigned and undated and, according to the grounds for permission, the First-tier Tribunal Judge was informed that the appellant had not appeared to understand the contents when it was completed. Indeed, the representative's email of 4 November 2019 (seeking an adjournment) confirms this. It states: "*We have tried to prepare a witness statement with him which was submitted in the bundle, but in the end we could not have our client sign it as he seemed too confused to sign it at the end of the process so that we could not even be sure he still agreed with its contents*". Quite why the statement was included in the bundle of documents is difficult to comprehend in those circumstances but as the position was made clear to the judge (he had plainly seen the email of 5 November: at 19-20, and was aware the statement was unsigned: at 21) and as the appellant did not give oral evidence and adopt the contents of the statement at the hearing, the document should not have formed part of the evidence that was assessed.
12. At paragraph 28, the judge confirms that he had considered the unsigned witness statement and he sets out difficulties with it in paragraph 29. At no point was there any acknowledgment by the judge of the appellant's alleged confusion over the contents of the statement and the fact that he had not signed it because of that confusion. Given that there was a psychiatric report which set out a medical professional's view of the appellant's mental health problems and the unlikelihood of him giving reliable evidence at that point in

time, the judge erred in taking the most recent unsigned statement into account and then using its contents to find contradictions with the other evidence (at 29). That error is material to the outcome of the decision as it infects the findings that were made in respect of the appellant's claim.

13. I have had regard to Ms Isherwood's helpful and fair acceptance of this error in her letter of 19 May 2020.
14. For all the above reasons, I therefore conclude that the determination cannot stand and it is set aside in its entirety except as a Record of Proceedings. The respondent requests that the matter be determined afresh by the First-tier Tribunal and as the appellant has not had a fair determination of his appeal and as fresh findings of fact will be required on all issues, I agree that is the most appropriate avenue.

Decision

15. The decision of the First-tier Tribunal contains an error of law which requires that it be set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal for a fresh decision to be made on all matters. The matter shall be heard by any First-tier Tribunal Judge except Judge Greasley.
16. Directions shall be issued by the First-tier Tribunal in due course.

Anonymity

17. I make an order for anonymity.

Signed

R. Kekić

Upper Tribunal Judge

Date: 3 June 2020