IAC-AH-SC-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08048/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26 February 2020	**On 20 April 2020**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

PT
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr E Pipi of Counsel, Templeton Legal Services
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Kenya, is appealing against the decision of First-tier Tribunal Judge Young promulgated on 16 October 2019 refusing his protection claim. The appellant claims to be gay. Judge Young did not believe him. He gave multiple reasons including that the appellant, despite having been in the UK since 2002 and despite submitting multiple applications to the respondent, had not raised the issue of his sexuality until he claimed asylum in August 2018.

2. The judge observed, at paragraph 17 of the decision, that in the appellant's asylum interview, which took place on 31 May 2019, the appellant made several references to feeling suicidal and to hearing voices in his head.

3. At the First-tier Tribunal hearing the appellant applied for an adjournment in order to obtain a psychiatric report. The judge refused the application.

4. The grounds of appeal argue that the judge fell into error by refusing to adjourn the hearing.

5. Upper Tribunal Judge Gill granted permission on the basis that arguably fairness meant that the judge ought to have had the benefit of a medical report in order to assess the weight to be given to the appellant's answers at the asylum interview.

6. The issue in this appeal is fairness: that is, whether the appellant was deprived of a fair hearing by the absence of a psychiatric report. As explained by the Upper Tribunal in *Nwaigwe (adjournment: fairness)* [2014] UKUT 00418 (IAC):

> *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 FtT 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? See SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284*

7. Before me, Mr Pipi submitted that it was necessary for there to be a psychiatric report about the appellant's mental health as the case turned on his credibility, and the credibility of his evidence could not properly be evaluated without the benefit of medical evidence. He drew attention to paragraph 90(6) of the decision where the judge placed weight on the confusion in the appellant's witness statement. Mr Pipi argued that the confusion may have been a consequence of the appellant's mental health and the judge was unable to properly assess this without a medical report.

8. Mr Melvin argued that an application had not been made prior to the hearing and the limited medical evidence that was put before the First-tier Tribunal did not indicate that the appellant had a significant mental health problem. He noted that there was no indication that an expert had been instructed or as to how long it would take to obtain a report.

9. I am sympathetic to the argument advanced by Mr Melvin that if the appellant needed an expert report he could, and should, have applied before the hearing for an adjournment. I also agree with Mr Melvin that there is a notable lack of evidence, in the form of medical records, to support the appellant's claim to suffer from serious mental health problems. However, the responses given in the asylum interview (as summarised at paragraph 17 of the decision) indicate that the appellant may have a serious mental health problem which would need to be taken into consideration when assessing his evidence. Whilst the appellant's representatives clearly ought to have applied prior to the hearing for an adjournment, the timescales were relatively short: the respondent's decision is dated 13 August 2019 and the hearing was on 20 September 2019. Considering all of the circumstances, I am (just) persuaded that fairness required the appellant to be given an opportunity to produce a medical report notwithstanding the failure to apply for an adjournment earlier and the lack of medical records to support the claimed mental health problems.

10. As the appeal will need to be considered afresh with no findings preserved, having regard to para. 7.2(b) of the Practice Statements of the Immigration and Asylum Chambers of the First-tier Tribunal and Upper Tribunal, I have decided that the appeal should be remitted to the First-tier Tribunal.

Notice of Decision

1. The appeal is allowed.

2. The decision of the First-tier Tribunal is set aside and the appeal is remitted to the First-tier Tribunal to be heard afresh by a different judge.

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 his 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

Upper Tribunal Judge Sheridan Dated: 24 March 2020