



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004391
First-tier Tribunal No:
PA/01268/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 04 December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

OEO
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M. Uddin, Counsel instructed by Samuel Louis Solicitors
For the Respondent: Mr M. Parvar, Senior Home Office Presenting Officer

Heard at Field House on 22 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The Appellant appeals against the decision of First-tier Tribunal Judge GA Black (hereafter “the Judge”) who, in a decision dated 8 August 2023, dismissed the Appellant’s appeal against the decision of the Respondent dated 8 January 2020 which refused his asylum and humanitarian protection claims made in 2017.
2. Permission to appeal was granted by Judge Dainty on 20 September 2023 with no restriction on the grounds.

The relevant procedural history

3. It is clear that this particular appeal has an highly unusual and unsatisfactory procedural history. The Appellant claimed asylum on 28 September 2017 and it was not until 8 January 2020 that the Respondent decided to refuse.
4. The papers before me are not as full as I would have liked, but it appears from the decision of the Judge that a number of appeal hearings were listed and adjourned in 2020 and 2021 before eventually coming before Judge Carey on 7 September 2021. The Judge refused an adjournment request and went on to dismiss the appeal; this decision was then set aside by the Upper Tribunal on the basis of procedural irregularity and the matter was remitted back to the First-tier Tribunal.
5. According to para. 9 of the Judge’s decision, on 8 December 2022 directions were issued by the Tribunal requiring the Appellant to serve his evidence within 28 days or ask for a further extension if necessary - the Appellant did not comply with this direction.
6. On 2 February 2023, the Appellant wrote to the Tribunal stating that he had been kicked out of his uncle’s house and was homeless; the Appellant did however give an address for any further correspondence.
7. On 12 May 2023, a further appeal hearing was adjourned due to an administrative mistake which caused the appeal to be listed as a case management review rather than a substantive appeal. In the directions, the Judge noted that the day before the hearing the Appellant had sent an email to the Tribunal alleging that he had been homeless since 2 February 2023 had not been able to find representation. The email also asserted that the Appellant was waiting to see someone about legal aid.
8. The Tribunal issued a further direction giving the Appellant until 23 June 2023 to serve documentation; the directions also indicated to the Appellant that he would be expected to engage with the proceedings even if he did not have legal representation.

The decision of the Judge

9. By the time of the hearing before the Judge in August 2023, there had been no further contact from the Appellant and no evidence served.
10. The Appellant also did not join the CVP appeal hearing before the Judge and attempts to contact him by telephone were unsuccessful, (para. 12).
11. The Judge noted the history of non-compliance in the appeal and the Appellant's vulnerabilities both in respect of his alleged homelessness and by reference to the relatively old medical evidence dated 8 March 2018 (at para. 7) that sought to certify that the Appellant was suffering from anxiety with depression alongside thoughts of self-harm and suicidal ideation. The 2018 evidence also indicated that the Appellant had had a hospital admission for psychiatric care and later discharged on 21 February 2018.
12. The Judge ultimately considered the overriding objective and concluded that it was not unfair to proceed in the Appellant's absence taking into account all the circumstances, (para. 13).
13. In assessing the Appellant's asylum claim, the Judge noted that the Appellant had failed to provide any evidence at all and had not complied with any directions issued over a period of three years (para. 22). The Judge went on to conclude that the Appellant was not credible and ultimately dismissed the Refugee Convention appeal; the Article 3 and Article 3 (medical) claims as well as the Article 8 ECHR appeal.

The error of law hearing

14. Despite the lack of communication from the Appellant he nonetheless has been able to instruct Samuel Louis Solicitors to appeal the decision of the Judge.
15. Mr Uddin, who had been instructed late in the day for this appeal hearing, told the Upper Tribunal that the solicitors had been instructed on 23 August 2023 but did not lodge their grounds of appeal until 1 September 2023.
16. Mr Uddin was not able to confirm whether the Deptford address given for the Appellant in the IAFT-4 form is the Appellant's home address and indicated that his instruction was that the Appellant had been and is homeless.

Ground 1

17. In ground 1, the Appellant complains that the Judge acted procedurally unfairly by failing to convert the CVP hearing to an in-person hearing on the basis that the Appellant's vulnerabilities would prevent him from effectively participating in a remote hearing, i.e. that he would be unable to conduct the hearing from a private space.

18. In his oral submission, Mr Uddin added by reference to para. 6 of the decision, that when contacting the Tribunal in February 2023, the Appellant had indicated that his preferred method of communication was by email. Mr Uddin therefore submitted that it was not enough that the Tribunal's clerk had sought to phone the Appellant on the mobile phone number given by the Appellant and that the Tribunal should have emailed him.
19. Mr Uddin also went on to emphasise the medical evidence from 2018 as well as the Appellant's claim to have been evicted from his uncle's house in 2023 and speculated that the Appellant may have overlooked or not understood the notice of hearing documents sent by the Tribunal.

Ground 2

20. In respect of ground 2 and the assertion that the Judge applied the wrong standard of proof at para. 3 of the decision, Mr Uddin declined to make any further submission.

Findings and reasons

Ground 1

21. There can be no doubt that the procedural history in this case is highly unusual. On the face of the evidence before me, and indeed the Judge, the Appellant has not complied with any Tribunal directions since he appealed the decision of the Respondent in 2020.
22. During the error of law hearing, I asked Mr Uddin to explain the absence of any witness statement, medical evidence or so on from the Appellant in respect of the error of law challenge. Mr Uddin indicated that he had been told by his instructing solicitors that they had had some difficulty in their dealings with the Appellant.
23. In response Mr Parvar submitted that the Judge had acted fairly applying the relevant jurisprudence and argued that the Appellant's situation remained hazy in the absence of any evidence from him.
24. In my view the Judge did not act in a procedurally unfair way. I have come to that conclusion based on not only the evidence before the Judge but also the information given to me by Mr Uddin during the error of law hearing.
25. It cannot be said that the Judge did not fully recognise the Appellant's vulnerabilities taken at their highest including the 2018 medical evidence of mental health problems and the 2023 evidence from the Appellant indicating that he had become homeless - the Judge expressly factored these relevant matters into her decision to continue with the hearing in the Appellant's absence at para. 11.

26. Whilst I see some force in the Appellant's argument that, armed with the information that the Appellant was homeless at the beginning of 2023, it might have been more sensible for the Tribunal to have listed the appeal for an in-person hearing, nonetheless I do not see how this constitutes procedural unfairness in the actions of the Judge herself.
27. It is important to note that the Appellant has been able to instruct solicitors for the purposes of appealing the First-tier Tribunal's decision and there has been no suggestion, nor is there any evidence before me to show, that he lacks capacity to do so.
28. Mr Uddin suggested that he had been told that it had been difficult for the instructed solicitors to gain very much from the Appellant but, in my view, this does not even begin to stand as the kind of evidence required to support a contention that the Judge acted procedurally unfairly.
29. As I have already said, it has not been asserted that the Appellant lacks capacity to instruct solicitors and there is no witness statement evidence from any solicitor or caseworker in Samuel Louis solicitors to confirm that they have otherwise been unable to take sufficient instructions in order to properly represent the Appellant in these proceedings.
30. There is simply no contemporary explanation at all from the Appellant to explain why he did not engage with First-tier Tribunal directions or notices of hearing; why he did not join the CVP hearing nor why he did not answer the phone when called by the First-tier Tribunal.
31. It is plain that the Appellant gave an address for ongoing communications in his letter of February 2023, and it is also absolutely plain that the Appellant received the decision of the Judge, it therefore cannot possibly be said that the Appellant was not on notice that he was required to provide evidence and to join a CVP hearing.
32. As a consequence of the lack of information and evidence in this appeal, Mr Uddin descended into speculating about whether or not the Appellant had received, or been able to understand, the directions or notice of hearing documents.
33. Again I reiterate, that I have not been given a reasonable explanation for the absence of any evidence at all from the Appellant as to why he has continued to fail to comply with directions or join a relevant hearing.
34. I find that the Judge carried out a fair assessment of the history of the claim and the potential vulnerabilities of the Appellant despite the antiquity of the medical evidence and fairly decided that the appeal should proceed in the absence of the Appellant bearing in mind the overriding objective of the Tribunal to decide cases without unnecessary delay [r. 2(2)(e)].

35. As the Supreme Court said in Begum, R. (on the application of) v Special Immigration Appeals Commission & Anor [2021] UKSC 7 at para. 90, the assessment of fairness must be viewed from both sides.
36. I see absolutely no merit in the argument that because the Appellant has now instructed solicitors to appeal the decision of the Judge this indicates that there has overall been procedural unfairness. As I have already said, this is an unusual case, and I note from the history that despite previously engaging with the Upper Tribunal for the purposes of setting aside the decision of Judge Carey in 2021, the Appellant then failed to comply with any further directions.
37. Like the Judge, I have no confidence at all that the Appellant would engage properly with any further directions from this Tribunal. I therefore conclude that the Judge was entitled to draw the line where she did having properly considered the entirety of the relevant context, as per: SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284.

Ground 2

38. As for ground 2, I find that Mr Uddin was right not to pursue the point further and that it is wholly without merit. The Judge plainly referred to the right standard of proof at para. 3 of the decision.

Notice of Decision

39. The Appellant's appeal is dismissed.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 November 2023