



**Upper Tribunal
(Immigration and Asylum Chamber)**
AA/10179/2013

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 30th June 2014**

**Determination Sent
On 20th August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

**Between
MM**

(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy, instructed by Quality Solicitors.

For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Sri Lanka born on 9th September 1981. He appealed against a decision dated 8th November 2013 to remove him from the UK following a refusal to grant

him asylum, humanitarian protection and protection under the European Convention.

2. In a determination dated 3rd April 2014 Judge of the First Tier Tribunal Shepherd refused the appellant's appeal on all grounds.

Application for Permission to Appeal

3. The application for permission made by the appellant stated that the judge did not adjourn the hearing when requested, as the appellant was ill and admitted to hospital, and this was an error in law. The judge took into account that the matter could have been dealt with in fast track in November 2013 because no further documentation had been served and further that in effect the appellant had made up an illness and the appellant 'had in mind an application for an adjournment' from 24th February 2014. This was contrary to the evidence submitted on the day of the hearing which was that the appellant had been admitted to hospital. It was unclear why the judge was expecting further information from the appellant.
4. A complaint had been drafted to the Resident Senior Judge who advised that the solicitors should wait until after a determination had been promulgated.
5. Permission to appeal was granted by Designated Judge Holmes of the First Tier Tribunal.

The Hearing

6. At the hearing, Mr Paramjorthy relied on the grounds for permission to appeal. Mr Kandola thought it was troubling that counsel appeared to have been instructed on the basis only of an adjournment.

Conclusions

7. The hearing before the First Tier Tribunal took place on 6th March 2013.
8. The appellant attended a private GP Dr A Obaro who on 27th February 2014 detailed that the appellant had acute gastritis and he noted that he complained of chest pains. A letter of 6th March faxed to the Tribunal from Mr Assaad, the appellant's solicitor, stated

'I confirm that I had attempted to obtain instruction from my client MM on the 25th February 2014, leading up to the hearing this morning and I was not able to obtain his instructions. I then received a letter from a Dr Obaro dated 27th February

2014 confirming that he had attended upon MM that day who had complained to him inter alia of chest pains.

I had managed to speak with MM by telephone on 4th March 2014. He informed me that he was still feeling unwell. I made it plain to him, however, that he would need to attend at the hearing on 6th March 2014 at Taylor House.

I confirm this morning I received a text message on my mobile phone at precisely 4.02 am from MM at 8.00am who informed me that he had severe chest pains and was waiting to be attended upon by a doctor at the A&E Department. I then telephoned Counsel to inform her of this'.

9. An application for an adjournment was made at the hearing which was refused.

10. The judge at paragraph 15 stated that

' I considered the matter taking into account these three factors;-

-The initial letter upon which the appellant was to rely for an application for an adjournment was clearly wholly inadequate

-That there had been a lack of any preparation for today's hearing beyond the bundle which had been ready at the time of the fast track hearing on 19th November. In particular no further documentation had been obtained from Sir Lanka

-That Ms Iqbal had no instructions to proceed substantively before me'.

11. At paragraph 20 of the determination was recorded the following

'At the time of my preparation of this determination some two and half weeks have passed during which time there has been no communication from either the appellant or his representatives with the Tribunal'.

That, from the record, is not correct because the solicitors had indeed sent a letter of complaint to the Tribunal prior to the Tribunal determination being promulgated. What was not with that letter was any further medical evidence. What the judge was waiting for its not clear because the refusal to adjourn had already been made.

12. Nonetheless it was confirmed by documentation that the appellant had indeed been admitted to Newham University Hospital. This discharge letter is dated 6th March 2014 timed 0841 hours but this letter was not before the First Tier Tribunal Judge.
13. **MM (unfairness E& R) Sudan [2014] UKUT 00105 (IAC)** confirms that it is every litigant's right to have a fair hearing and this would include, his right to engage with the hearing.
14. The difficulty for the judge was that Ms Iqbal indicated that she had been instructed to request an adjournment **even before** the claimed emergency. She had no further instructions beyond an application for an adjournment. I note that the solicitor's letter did not indicate that counsel had, the evening before, been instructed to adjourn the proceedings. This fact was omitted. Further counsel did not remain for the hearing which took place in the afternoon although Mr Paramjorthy submitted that this was because counsel had no instructions from the appellant. There was however a witness statement.
15. However, the fact that there had been a lack of preparation for case on the day was taken into account was an error because in fact the matter had been removed from fast track on the basis of the 'independent evidence of torture' not for further documentation. The judge who removed the appeal from fast track stated that the matter was **not** removed in order to obtain further documentation. He found there had been time for that.
16. That there had been a lack of preparation and the appellant was not available to give instructions to his solicitors might be explained by the fact that he was unwell. What is clear from the correspondence is that the appellant reported chest pains to Dr Obaro on 27th February 2014 and was admitted to hospital for the same complaint on the morning of the hearing.
17. It may well be that there was confusion as the judge quite rightly put the matter back on the day so that further submissions could be made, although Ms Iqbal 'indicated that she had no instructions to do so and that she would not appear' [18]. The judge then records at [19] that 'at 3.15 the matter was called for a final time when no-one appeared on behalf of the appellant. Significantly there was no reiteration of the application for the adjournment'.
18. I find that there was an error of law in the determination, specifically that the matter was determined without the appellant giving his evidence following the refusal to adjourn, in

part, based on the lack of preparation. This must have affected the credibility findings with respect to the appellant and these in turn run to the heart of the appeal. I set aside the determination and preserve none of the findings.

19. The matter should be returned to the First Tier Tribunal for a hearing de novo.

Signed

Date 30th June 2014

Deputy Upper Tribunal Judge Rimington