



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

Appeal Number: IA/50129/2013

THE IMMIGRATION ACTS

Heard at Field House

On 15th August 2014

Determination

Promulgated

On 22nd August 2014

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

**MOHAMED HASSAN SHIHABDEEN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Kirk of Counsel

For the Respondent: Mr Deller, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant Mohamed Hassan Shihabdeen is a citizen of Sri Lanka born 2nd July 1975. He entered the United Kingdom initially on 26th November 1999 with entry as a student. His entry visa was subsequently extended to a date in 2007.

2. The Appellant did not leave the UK but overstayed and in October 2011 made an application for asylum. That application was subsequently withdrawn by him. Various further applications for leave to remain were made on his behalf, but by 11th November 2013 the Respondent made a decision to remove him from the United Kingdom.
3. The Appellant appealed that decision, claiming that removal would be a breach of his Article 8 ECHR family/private life rights. His appeal hearing came before First-tier Tribunal Judge Ross at Richmond on 4th March 2014.
4. At the outset of the hearing before FTTJ Ross application was made by the Appellant's representative, to adjourn the proceedings so that the Appellant could obtain medico-legal report. The purpose of that report, I understand, is to show that the Appellant had scarring on his body and that the presence of the scarring lent credence to his claim of being at risk on return to Sri Lanka.
5. For the purposes of this determination it is sufficient to say at this stage, that the FtT judge refused the adjournment; proceeded with the appeal and in a short determination dismissed the Appellant's Article 8 claim.
6. The Appellant sought permission to appeal on two grounds:
 - The determination of FTTJ Ross was unsafe because he had refused the Appellant's application to adjourn. Despite saying at the hearing, he would set out full reasons for his refusal of that request, he failed to do so.
 - Following on from that the judge's proportionality assessment is an inadequate one because material evidence is missing as a result of refusing the adjournment request.
7. Permission to appeal was initially refused by FtTJ Simpson, but was granted on a renewed application before UTJ Goldstein.
8. The relevant parts of the grant read as follows:
 - (1) *The renewed grounds continue to rely upon the original grounds submitted in support of the first application for permission to appeal.*
 - (2) *It is apparent from the Record of Proceedings that the First-tier Judge recorded without more, "application for adjournment" as contended in the renewed grounds, no explanation for refusing that request is recorded within the determination.*
 - (3) *Whilst this would appear to have been an appeal, insofar as the judge was concerned, confined to Article 8 ECHR issues, the purpose behind the adjournment request relating to the Appellant's scarring clearly contemplated wider issues.*

(4) I am therefore persuaded that the grounds raise an arguable challenge to the First-tier Judge's decision to refuse the Appellant's adjournment request and as to whether in the circumstances it deprived the Appellant of the opportunity of a fair hearing.

Thus the matter comes before me to decide whether the determination of FTTJ Ross discloses an error of law such that the decision requires to be set aside and remade.

Hearing Before Me

9. Mr Kirk on behalf of the Appellant expanded on the grounds seeking permission. He submitted that the determination of the FTT discloses two material errors:

- Firstly the judge undertook to give full reasons for refusing the adjournment but none are mentioned.
- Secondly the judge acted unfairly in that his Article 8 consideration fails to properly analyse the evidence which was before him. The failure to grant the adjournment deprived the Appellant from obtaining medical evidence which would show that he suffers from significant mental health problems. The FTTJ at the hearing have said that all matters would be factored into the proportionality exercise but these are matters which were referred to in the hearing and feature nowhere in the judge's determination.

10. Mr Deller, who had been set to defend the determination, agreed that at first blush the determination although terse could be said to be adequate. However he accepted, fairly, that the submissions made on behalf of the Appellant had somewhat widened the scope of the objections to the judge's determination. He submitted that if it was correct that reference was made to the Appellant's mental health issues during the course of the hearing, then nowhere in the determination could it be said that the judge had taken this into account, in considering whether to adjourn nor in the proportionality assessment.

11. He accepted that such an omission would render the determination defective and amount to legal error. Stepping back, whilst he would have defended the judge's omission in not setting down fully why he refused the adjournment, if it was correct that the application for adjournment contained material that was not even referred to in the body of the determination, then that would be wrong and that must amount to legal error.

Consideration

12. I agree with the representations made on behalf of the Appellant. The determination of FtTJ Ross is flawed in that there is no record in it of the reasons why the judge refused the application for adjournment, nor it

seems, has the judge fully evaluated the evidence placed before him. Cumulatively those matters amount to legal error such that the decision is rendered unsafe and must be set aside.

13. Both representatives were of the view that nothing could be preserved from FtTJ Ross's determination. Both representatives agreed that the appropriate course in this matter, is to remit the appeal to the First-tier Tribunal for a full rehearing before a judge other than FtTJ Ross.
14. Further it is directed that the Appellant obtain the medico-legal report sought and that this report be available for the renewed hearing.

Decision

The determination of the First-tier Tribunal is hereby set aside for legal error. The matter is remitted to the First-tier Tribunal for a fresh rehearing before a Judge other than FtTJ Ross.

No anonymity direction is made

Signature

Judge of the Upper Tribunal

Dated