



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

Appeal Number: AA/09266/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 10 March 2015**

**Determination  
Promulgated**

**On 27 April 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

**Between**

**MR SATVIR SINGH THARADACK  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Yeo (Counsel instructed by Reiss Edwards Ltd.)

For the Respondent: Mr L Tarlow (Home Office Presenting Officer)

**DECISION AND REASONS**

1. The appellant is a citizen of India. He appeals a decision of the First-tier Tribunal (Judge Keane) promulgated on 17 December 2014, in which the Tribunal dismissed his appeal against the respondent's decision to refuse asylum and to make removal directions.

**Background**

2. The appellant was born on 5 October 1979, he arrived in the UK on 26 June 2003 and claimed asylum. It was ascertained that he previously claimed asylum in Austria. The basis of his claim was that he was harassed by members of a gang, having been singled out for persecution by the gang and that he suffered a physical attack. The respondent considered his

claim and did not find it to be credible. She was of the view that there was a sufficiency of protection in India and/or the appellant would be able to relocate to another area in India. The respondent considered the requirements under Appendix FM and paragraph 276ADE and concluded that the appellant did not meet those requirements.

3. The Tribunal proceeded to hear the appeal notwithstanding that the appellant did not appear at the hearing, and heard submissions from the Home Office Presenting Officer. The Tribunal took into account the witness statement produced by the appellant at page 20 of his bundle and also noted that he did not place any reliance on his screening or asylum interview. In a clear and thorough decision the Tribunal considered all aspects of the appellant's claim and concluded that it was not a credible account. In particular, weight was placed on matters arising under Section 8 of the 2004 Act at [14]. The Tribunal went on to consider Article 8 ECHR outside of the Rules with reference to the available evidence, namely at paragraph 7 of the appellant's witness statement. He stated that he lived in the UK for 11 years and that he had relatives who helped him. The Tribunal concluded that he did not meet the requirements of Article 8 under the Rules or outside of the Rules.

### **Grounds of Application**

4. In grounds applying for permission to appeal, the appellant contended that through no fault of the Tribunal, the decision reached was procedurally unfair because the appellant was not present at the hearing. He contended that his former solicitors had been negligent and that he had made a detailed complaint via his new legal representatives. In short, he asserted that his former solicitors advised him not to attend the hearing of his appeal.

### **Permission to Appeal**

5. Permission to appeal was granted by First-tier Tribunal Judge Landes. He concluded (in detailed reasons at paragraph 2) that overall there was little merit in the challenge to the credibility findings made by the Tribunal. Further he found no error in the contention that the appellant's rights under Article 8 had not been considered. They were dealt with at paragraph 15. The only issue considered to be an arguable point was that of procedural unfairness. Judge Landes stated :“It is evident from case law (see **MM (unfairness) [2014] UKUT 105**) that the test is whether a party has been deprived of the right to a fair hearing. Of course the former solicitors have not yet responded to the complaint against them, but at this stage I cannot say it is not arguable that the reason for the appellant's absence from the hearing was that he was not properly advised rather than he could not afford to pay for legal representation at the hearing and had requested that the case proceed on paper in his absence.

I have carefully considered whether I should simply say that the decision would not have been any different even if the appellant had

been present at the hearing. The judge decided the case on credibility only but aside from issues about sufficiency of protection in India, the respondent's case was clearly that the appellant would be able to relocate to avoid his problems and when the appellant was asked about relocation in interview he said only that he would not have been able to buy another farm with the money he sold his land for rather than indicating that the gang would be able to reach him. It is difficult to see how the appellant's asylum or humanitarian protection claim could succeed. Even so far as the appellant's Article 8 claim is concerned, it is not said, for example, that anything material was omitted from the appellant's witness statement or that there were any relevant witnesses available to give evidence or similar.

However, the case has emphasised that it is not easy to know what might happen if an appellant has an opportunity to explain his case in person and that important rights such as the right to be present at the hearing of an asylum/human rights claim are not likely to be denied and it is on that basis that I grant permission, although I do not restrict the grounds which may be argued."

### **Error of Law Hearing**

6. I heard submissions from Mr Yeo and Mr Tarlow responded. Mr Yeo placed significant weight on the decision of **MM** cited above. He produced a copy of the written complaint lodged by the appellant and made on his behalf by his new legal representatives. It was understood that the complaint would be pursued by the appellant via the legal ombudsman in due course.
7. Mr Tarlow relied on the Rule 24 response and in particular emphasised that there would be no difference to the outcome having regard to the issue of relocation within India and it could not be said that the conclusion would have been any different in the event that the appellant had attended to give evidence.

### **Discussion and Decision**

8. I have decided that there was a procedural irregularity such that the decision made should be set aside. I endorse entirely the observations made by First-tier Tribunal Judge Landes in particular as to materiality. However I have evidence that the appellant has now formally made a complaint against his former solicitors. No response has been received as yet. Mr Yeo confirmed that the complaints procedure was such that the appellant was now in a position to be able to pursue his complaint with the legal ombudsman and proposed to do so. I also took into account that there was evidence in the file to show that the appellant had paid for an oral hearing at the First -tier Tribunal. I was satisfied that the circumstances were in accordance with the guidance in **MM** in which emphasis was placed on the fact that a Tribunal should be slow to

conclude that the outcome would be otherwise where a person has effectively been deprived of a fair hearing.

9. In this instance I proceed on the basis that there is evidence to show that the appellant received poor legal advice and it was for that reason that he did not attend the hearing. I do note, however, that he has been served with the notice of hearing requesting him to attend on the day. The onus is on him to pursue his appeal, but I accept that he would be influenced by any legal advice from his representatives.
10. I am persuaded that the Tribunal should indeed exercise a cautious approach in concluding that the outcome would have been the same if the procedural irregularity or impropriety had not occurred.
11. As it stands, I find that the decision made before the First-tier Tribunal was sound having regard to the evidence before it. However the Tribunal did not know the reasons why the appellant had failed to attend and it is not known what he would have stated in evidence.

### **Decision**

12. I find a material error of law in the Tribunal decision. I allow the appeal and I set aside the decision promulgated on 17 December 2014.
13. I remit the matter for hearing afresh at the First-tier Tribunal at Taylor House (excluding Judge Keane) on a date to be fixed with a time estimate of two hours and an interpreter in the Hindi language.

No anonymity direction is made.

Signed

Date 26.4.2015

GA Black  
Deputy Upper Tribunal Judge G A Black

### **TO THE RESPONDENT**

#### **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award.

Signed

Date 26.4.2015

Deputy Upper Tribunal Judge G A Black