Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02724/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25 May 2017	**On 13 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

ZU
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant in person
For the Respondent: Mr. P. Nath, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Abebrese, promulgated on 14 October 2016, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant further leave to remain in the United Kingdom.

2. Given the issue raised by the Appellant in relation to his fear of return to Pakistan, I have made an anonymity direction.

3. Permission to appeal was granted as follows:

> "It is an arguable error of law that the Appellant's adjournment application made by email before the hearing as instructed by the Tribunal administration (a copy of an email which was sent is lodged with these grounds) was not considered timeously before the hearing took place to allow time for the Appellant to retrieve his documents from his previous agents. The documentary evidence and the Appellant's oral evidence may have made a material difference to the outcome or to the fairness of the proceedings."

4. The Appellant was not legally represented. I explained the remit of the Tribunal's jurisdiction, that I was considering whether or not there was an error of law in the decision of the First-tier Tribunal. The Appellant stated that he had not seen the decision of the First-tier Tribunal. I provided him with a copy, and referred to the relevant paragraphs. I went through the issues which were before me. The Appellant confirmed that he understood. I heard brief submissions from Mr. Nath and from the Appellant. I reserved my decision.

Error of Law

5. I find that on 17 August 2016 the Appellant sent an urgent request for an adjournment to the Tribunal. I have carefully considered this document. It states that the Appellant telephoned the Tribunal on 16 August 2016 at 16:30. He was told by the advisor to whom he spoke to write to the judge who could decide the adjournment request of the Appellant's hearing. It is not clear how this first request for an adjournment was communicated to the Tribunal. It appears that it was sent by fax, but there is no return fax number. The Appellant stated that he could not afford any longer to pay his solicitor who had not given him any update relating to his case. He therefore decided to contact the court directly. When he called the court he was informed that the hearing would be held on 19 August 2016 at Taylor House at 10:00am. He stated that he was advised to send an adjournment request to the court as soon as possible and to start gathering his documents. He asked for some time to rearrange his documents so that he could represent his case himself.

6. There is no indication in the record of the telephone conversation that the Appellant was told that he should not attend on 19 August 2016, the date of the hearing. It is clear from the Appellant's letter requesting an adjournment that he was aware of the date, time and location of the hearing. This letter was sent on 17 August 2016, two days prior to the hearing date.

7. The file then indicates that this adjournment request was refused. It states that the Appellant should attend to explain why the hearing should be adjourned. A note made on the file states that the Tribunal tried to contact the Appellant at 16:38 on 18 August 2016 but the number given to the Tribunal was not recognised. Therefore on 19 August 2016 notice was sent to the Appellant stating that his adjournment request had been refused.

8. An email which contains exactly the same text as the fax referred to in [5] above was emailed to the Tribunal on 18 August 2016. It indicates that it was sent at 17:35, by which time the Tribunal had already tried to contact the Appellant by phone as set out above. Had the first document been sent via email it is likely that the Appellant could have been contacted, but it appears that he did not email the Tribunal until 17:35 on 18 August 2016, a day prior to the hearing.

9. While I accept that the notice of the refusal of the adjournment was sent on the date of the hearing, it is clear from the file that the Tribunal attempted to contact the Appellant on 18 August 2016, the day prior to the hearing, and it is also clear from the file that the Appellant was aware of the date, time and location of the hearing.

10. Therefore I find that in the circumstances where the Appellant knew of the time and date and location of his hearing, and in circumstances where he had not received any response to his request for an adjournment, he should have attended the hearing. The fax setting out his application for an adjournment was not placed before the judge who decided his appeal, but it had been placed before a judge on 18 August 2016 and the application had been refused on the basis that the Appellant should attend the hearing to explain why he needed an adjournment.

11. I therefore find that although this application for an adjournment was not placed before the judge who decided the appeal, the file which was before the judge indicated that the adjournment request had been refused and that an attempt had been made to contact the Appellant. I find that, given the timing of the application for an adjournment, the Tribunal dealt with it expeditiously. In the absence of any confirmation that his hearing had been adjourned, the Appellant should have attended the hearing. He has not explained why he did not attend the hearing.

12. I have considered whether any error, if there was an error in the judge's continuing to proceed in the absence of the Appellant, would have made a material difference to the outcome of the appeal.

13. The Appellant had a right of appeal against the decision under the immigration rules. The application was refused because the Appellant's Tier 4 Sponsor was not on the Sponsor register on 30 June 2015. I have carefully considered the grounds of appeal, the decision and the evidence of the Appellant at the hearing before me.

14. In the grounds of appeal it states:

> "Although in the notice of refusal it is mentioned the appellant was informed at (sic) the college being suspended and allowed 60 days to obtain a new CAS, it was never served to the appellant. The appellant called several times to the Home Office to explain the situation but the appellant never got any letter from Home Office."

15. At paragraph 12 of the decision the evidence which was before the judge is set out. This includes a letter sent to the Appellant dated 23 April 2015, and a "track and trace" receipt dated 25 April 2015. In paragraph 13 the judge states:

> "On 23 April 2015 the appellant was informed of this and that he was allowed 60 days to obtain a new sponsor and Confirmation of Acceptance for Studies, however he failed to respond accordingly".

16. The judge states in paragraph 14: "I do make a finding therefore that the respondents having made a decision to suspend the appellant's Tier 4 sponsor that the appellant had not taken the appropriate steps having been given notice to remedy the situation."

17. At the hearing before me I explained to the Appellant that, even if I were to find that there was an error of law in the judge proceeding to hear the appeal, in respect of the decision under the immigration rules, the Appellant could not have been successful given the evidence before the judge that a 60 day letter had been sent to the Appellant and also that it had been signed for by the Appellant. The Appellant then said, contrary to what is stated in the grounds of appeal, that he had received the 60 day letter dated 23 April 2015 from the Respondent.

18. I find that the grounds of appeal are incorrect when they state that the 60 day letter was not served on the Appellant. It is therefore also incorrect that the Appellant called the Home Office to explain. I will deal later with the reasons given by the Appellant for why he did not respond to the 60 day letter. I find that the Respondent acted in accordance with her policy. As it was the actions of the Respondent in removing the Tier 4 Sponsor licence which caused the Appellant's CAS to be invalid, in accordance with her policy, she gave the Appellant 60 days in which to find a new Tier 4 Sponsor. The Appellant received a 60 day letter from the Sponsor, but he did not obtain a new CAS prior to the expiry of that 60 days. I therefore find that the Appellant's appeal under the immigration rules could not have succeeded even had the Appellant had a hearing.

19. The judge did not consider Article 8, and I have considered whether this failure amounts to a material error. I have already found that the grounds of appeal are inaccurate and misleading given the evidence of the Appellant before me that he had received the 60 day letter. Further I note

that the grounds of appeal state that the Appellant is from Bangladesh when he is from Pakistan.

20. In the very general grounds set out at the start of the grounds of appeal document, (4), it states that the decision is "unlawful because it is incompatible with the right (sic) under the ECHR" and at (6) it states that "the decision to remove the appellants (sic) from the UK which is breach of his human right (sic) and against immigration rules". In the more particular grounds of appeal set out at paragraphs 1 to 4 there is no reference to the ECHR, let alone reference to a specific Article of the ECHR. There is no reference at all in the grounds of appeal to Article 8.

21. In relation to anything set out in the grounds of appeal which could point to an Article 8 claim, it states that "the appellant is in the UK for 8 years and is manage (sic) to show an established presence in the country". However it then states "the appellant has a progress and residency over 12 months". The grounds are inconsistent and vague, and I find that there is no clear Article 8 claim made in the grounds of appeal.

22. In relation to Article 8, Mr. Nath submitted that it would not have made a material difference as the requirements of Article 8 under the immigration rules could not have been met by the Appellant. Therefore, given the evidence before the judge, it would not have made a difference had the Appellant had an oral hearing as the Appellant would not have met the requirements of the immigration rules.

23. At the hearing the Appellant said that there was a "critical problem" to him staying in the United Kingdom, which was a problem back home. His family had stopped supporting him owing to his homosexuality. He said that he had received threats from home. He could not study in the UK because he had no financial support, but neither could he return to Pakistan because his life would be in danger. He said that this was the first time that he had raised the issue of his homosexuality before the Tribunal or before the Home Office. He said he had never raised it with his solicitor.

24. I find that this is an entirely new issue which the Appellant raised for the first time at the hearing before me. I explained to the Appellant again that the remit of my jurisdiction was to consider whether there was an error of law in the decision, not to decide what is essentially a fresh asylum claim. The issue of the Appellant's sexuality is a new issue which has not been raised either with the Home Office or with the Tribunal.

25. Given that it was an entirely new matter, even had the Appellant raised it at an oral hearing, it would not have been open to the judge to consider it in accordance with section 85(5) of the 2002 Act, as amended by section 15 of the 2014 Act. There is nothing about the Appellant's sexuality in the grounds of appeal, which is not surprising given that the Appellant

accepted that he had not raised this issue before. The judge would not have been able to take his sexuality into account.

26. Neither is there any reference in the grounds of appeal to any private life which the Appellant has built up in the UK. There is no reference to the Appellant not being able to continue his studies due to a lack of support from his parents in Pakistan. The Appellant has stated that this is the reason that he was not able to find a new college, but there is no reference to this in the grounds of appeal. There is no reference to there being any kind of claim under the ECHR, be that Articles 2, 3 or 8.

27. I therefore find that there is no material error of law in the judge's failure to consider Article 8 given the documents before him, which include grounds of appeal which are at the best vague, and at the worst actively misleading, and given that the judge would not have been able to consider the new matter of the Appellant's sexuality.

28. I explained to the Appellant at the hearing that I could not consider his claim now and that, if he had a genuine fear of persecution on return to Pakistan, the appropriate thing to do was to claim asylum. It was explained that he could seek advice from lawyers, or advice centres such as the CAB, but that he could also claim asylum in person. In order to make an appointment for a screening interview to claim asylum, the Appellant should call 0208 819 4524. Further information can be found at https://www.gov.uk/claim-asylum.

29. I find that the Tribunal dealt appropriately with the Appellant's very late application for an adjournment. The Appellant was never advised not to attend the hearing. He failed to attend although he was aware of the date, time and location of the hearing. I have set out above that the Appellant's appeal could not have succeeded under the immigration rules. I find that on the basis of the submissions before him, the judge could not have allowed the appeal under Article 8. He would not have been able to consider the issue of the Appellant's homosexuality as this is a new matter. I therefore find that, even though the Appellant did not have a hearing, there is no material error of law in the decision.

Notice of Decision

30. The decision does not involve the making of a material error of law and I do not set the decision aside. The decision of the First-tier Tribunal stands.

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 Date 13 June 2017

Deputy Upper Tribunal Judge Chamberlain