



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03032/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Manchester
On June 30, 2017**

**Decision & Reasons
Promulgated
On July 4, 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR OSAMAH OMAR HUSSAIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sharif (Legal Representative)

For the Respondent: Mr McVeetie (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. I do not make an anonymity order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).
2. The appellant is a national of Iraq. He entered this country on October 20, 2015 and claimed asylum the same day. His application was refused by the respondent on March 23, 2016 under paragraphs 336 and 339F/339M HC 395. The appellant appealed that decision on March 24, 2016 under section 82(1) of the Nationality, Immigration and Asylum Act 2002 and his appeal came before Judge of the First-tier Tribunal Gladstone (hereinafter called the Judge) on November 29, 2016 and in a decision promulgated on December 14, 2016 she dismissed the appellant's appeal on all grounds.

3. The appellant appealed that decision on December 28, 2016 arguing there had been unfairness to the appellant during the hearing in that the interpreter had spoken to the appellant in the wrong language and it was unfair to have continued the hearing once the error had been discovered. It was also argued that the Judge erred by making findings without hearing all of the evidence.
4. Judge of the First-tier Tribunal Adio found there was an arguable error in law on March 17, 2017. In a Rule 24 response the respondent argued there was no error because the appellant spoke both Sorani and Badini and he only raised an issue after he had been caught out during cross-examination. The appellant then chose not give evidence and the Judge made findings open to her.
5. The matter came before me on the above date.

SUBMISSIONS

6. Mr Sharif relied on the grounds of appeal and submitted that the Judge should have adjourned the hearing when she discovered the interpreter had been interpreting in Kurdish Sorani as against the requested Kurdish Badini. The interpreter should have notified the Judge that he was interpreting in Sorani as against Badini which was the language that had been requested for the interpreter. It was evident from the Judge's decision that questions had to be rephrased or put again and this emphasised the issue. Having identified the problem there had been a request to adjourn the case for a fresh interpreter as the appellant lost faith in the interpreter believing the interpreter to have deliberately mistranslated what he had said. The correct test to be applied was whether there had been unfairness. Mr Sharif submitted there was unfairness in this case and the decision should be set aside and the case reheard. The second ground of appeal followed the first ground in that by failing to adjourn the Judge made a decision without hearing all the evidence.
7. Mr McVeetie adopted the Rule 24 letter and submitted that whilst the issue was fairness he submitted that the Judge had acted fairly. Whilst the appellant had requested a Kurdish Badini interpreter it was clear that he also spoke the Sorani dialect because at the beginning of the hearing he spoke to the interpreter in Sorani which was why the interpreter spoke Sorani. The interpreter stated that Badini speakers also speak Sorani and the evidence recorded by the Judge demonstrated that he answered 30 questions put to him by his own representative and he then answered questions put to him by the respondent's representative and only complained when he was caught out. The questions put to him by his own representative were not straightforward questions and he had no difficulty answering those. He now called the interpreter a liar but there was no evidence to support this claim apart from his own evidence. He submitted there was no merit to the ground of appeal and there was also no merit to the second ground and he referred me to paragraphs [107-110] of the Judge's decision.

FINDINGS

8. Permission to appeal to me has been given in this case for the reasons set out above. Mr Sharif in submissions referred me to the Tribunal decision of MM (unfairness; E & R) Sudan [2014] UKUT 00105 (IAC) and stressed the issue was fairness.
9. At various times the Tribunal and Court of Appeal have stressed that fairness, as against reasonableness, is an important factor in this Tribunal. However, in order for there to be an error in law there must be gross procedural unfairness or a complete denial of natural justice and the question to be asked is whether “there any deprivation of the affected party’s right to a fair hearing?” In R and Others v SSHD (2005) EWCA Civ 982 the Court of Appeal made it clear that committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or fairness of the proceedings could be unfair.
10. In BM (Re Application for Judicial Review) 2005 Scot CS 97 it was alleged that there was a problem with the interpreter at the hearing. The Court of Sessions said that leave to appeal should have been granted notwithstanding that the appellant was represented at the hearing and no substantive issue had been raised with the interpretation or understanding of the claimant’s evidence at the hearing because possible issues relating to interpretation constituted a compelling reason why the claimant’s appeal should have been heard.
11. The difficulty for the Judge in this appeal is that an interpreter who spoke Kurdish Badini was not only required but had in fact been booked. The interpreter who was booked was such an interpreter but he also spoke Kurdish Sorani. It does not seem to be disputed that at the commencement of the First-tier hearing the appellant spoke to the interpreter in Kurdish Sorani. The interpreter did not indicate to those present that this was the language being spoken and during cross-examination the issue of language spoken became an issue to the extent that the appellant accused the interpreter of mistranslating what he said.
12. The Judge, in my opinion, was placed in an invidious position because she had taken evidence in chief, from the appellant, apparently without any problems but at the beginning of cross-examination an issue arose. The Judge offered the appellant and his representative the opportunity to restart the hearing in the correct language.
13. However, by this time there was a breakdown in confidence between the appellant and interpreter. Mr McVeetie submitted this was because of issues in his answers whereas Mr Sharif argued this was a language issue.
14. The Judge chose to proceed with the hearing but in light of what was being claimed/said and the fact the wrong language was being spoken I find

there was an unfairness with these proceedings. It may well be that the appellant was struggling with his answers but the Courts have continued to stress that proceedings must be seen to be fair and I find in these circumstances the Judge should have aired on the side of caution and not proceeded on the day. There was potentially a breakdown between the appellant and interpreter and in those circumstances I accept there is an error in law and I set aside the decision.

15. Mr Sharif indicated that this matter should be remitted back to the First-tier Tribunal for a fresh hearing with no findings preserved.
16. In light of Part 3, Section 7.1 to 7.3 of the Practice Statement I direct the matter should be remitted to the First-tier Tribunal.
17. I direct that any additional evidence should be served on both the Tribunal and other party in accordance with the current Procedural Rules.

DECISION

18. The appeal is remitted back to the First-tier Tribunal for a de novo hearing.
19. A Kurdish Badini interpreter is required.

Signed:

A handwritten signature in black ink, appearing to read "SPAR" with a flourish underneath.

Deputy Upper Tribunal Judge Alis