



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/12995/2016

THE IMMIGRATION ACTS

Heard at Field House
On 31 August 2018

Oral Decision & Reasons Promulgated
On 12 September 2018

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

AGA MOHAMMED ABDUL HAFEEZ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Shamsuzzoha, Legal Representative, Londonium Solicitors
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of Mr Aga Hafeez against the decision of First-tier Tribunal Judge O'Malley who after a hearing on 7 March 2018 dismissed the appellant's appeal against the decision of the respondent to issue a card acknowledging the appellant's lawful presence in the United Kingdom under the EEA Regulations 2006. At the hearing the appellant did not attend nor was he represented. There was and is no excuse for that having occurred. The representatives had written the day before to say that the appellant had been involved in an accident. That letter was sent by fax to the Tribunal at 17:17 hours after the normal business of the Tribunal had ended on 6 March 2018 the day before the hearing. It was an application for an adjournment. No response understandably was made to that application by the time the matter arrived before the judge on the following day. Indeed, no response to the application could reasonably

have been made, bearing in mind the lateness of the delivery of that application. Consequently, the application for an adjournment had not been permitted, therefore there was no professional or other reason justifying the appellant's representatives from not attending the hearing on that day. Had they done so they could have explained to the judge what the situation was and they could have provided a copy to the judge of the medical report upon which the appellant relied.

2. As it was, the judge did not know of the faxed letter. I find that it was not before him and could not reasonably have been put before him by 10 o'clock or thereabouts, and consequently he had no inkling at all of the medical evidence.
3. That is not however the only dereliction of duty on the part of the appellant's solicitors. They had submitted a bundle in breach of directions and that bundle had apparently been sent on 5 March, two days before the hearing. That too was well-short of any reasonable length of time by which the Tribunal could have processed that application, or indeed by which the bundle could have been placed before the judge. It requires at least a few days for a bundle to be joined up with the relevant file. That was in breach of an order for directions which had been made months before where bundles were to be submitted, but that was not complied with. Consequently the late filing of this bundle which did not therefore reach the judge in time for his consideration was entirely as a result of the fault of the appellant's solicitors. There is no excuse for that situation to have arisen.
4. In those circumstances it would have been entirely appropriate for me to have said that there was no error of law on the part of the judge. He did not know the existence of relevant material, he had not been provided with that relevant material in a proper, timely fashion, and she made her decision on the basis of its absence.
5. However, there is of course an overriding duty to deal with matters fairly, and in this case it appears that the appellant had suffered an incident (I do not know what sort of incident) on 28 February 2018, that is just over a week before the relevant hearing date. He had suffered multiple points of injuries around his upper body resulting in a temporary loss of consciousness. He had been treated at hospital but was later discharged. He had suffered some damage to nerve muscles on the left side of his neck which prevented lateral movement of his left hand which was in a plaster-cast. The pain was exacerbated by downward pressure on his left hand. As a result of the diagnosis which was made by the doctor, she advised full rest and care and some regimented movements for the remainder of the course of medication which was to last some four weeks. He was likely to suffer moderate to significant discomfort and pain whilst moving and it was her considered assessment that he was not currently medically fit to participate in a courtroom setting. Had the judge received a copy of that medical evidence I am satisfied that he would have been required as a matter of fairness to adjourn the hearing. I am bound to say that, in the course of the hearing today, Mr Shamsuzzoha who appeared on behalf of the appellant was not able to locate a copy either of the covering letter or of the medical report. I found such a copy in the depths of the file and was able to provide the parties with a copy of it. Mr Melvin had not received such a copy and indeed he had not received a copy of the bundle

either which is the subject of that appeal. I have no doubt that that was as a result of the failure on behalf of Londonium Solicitors.

NOTICE OF DECISION

6. However, in the interests of justice I set aside the First-tier Tribunal decision and direct that the re-making of the decision be conducted by the First-tier Tribunal. I set the matter down for hearing at Taylor House. If that proper hearing is to be conducted fairly then the appellant's solicitors must take heed of what I have said in relation to their prior conduct. They must be ready. They must have served a bundle in time and they must attend, even if it is to make the point that the appellant is unfit to attend a hearing.

ANDREW JORDAN
DEPUTY JUDGE OF THE UPPER TRIBUNAL

31 August 2018