



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/01984/2016

THE IMMIGRATION ACTS

Heard at Field House
On 1 May 2018

Decision & Reasons Promulgated
On 15 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

MUHAMMAD ZEESHAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. S. Ell of Counsel

For the Respondent: Mr. D. Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Raymond, promulgated on 27 October 2017, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse further leave to remain.
2. Permission to appeal was granted as follows:-

“Arguably, given the medical evidence produced, the judge erred by refusing to adjourn the proceedings and it was arguably unfair for the appeal to have

proceeded in the appellant's absence. It may be that, in light of the allegation made against the appellant and the evidence produced in that regard, his absence was immaterial. However the grounds are at least arguable."

3. The Appellant attended the hearing. I heard brief submissions following which I announced that I would allow the appeal as I found the decision involved the making of a material error of law. I remitted the appeal to the First-tier Tribunal to be remade.

Error of Law

4. The Appellant requested an adjournment of his appeal on the morning of the hearing by way of a letter, together with accompanying medical evidence, delivered to the Tribunal at Hatton Cross by a friend. The Judge refused to grant an adjournment and proceeded to hear the Appellant's appeal in his absence and, given that he was not legally represented, in the absence of any legal representation.
5. At [20] to [52] the Judge set out his consideration of whether or not to adjourn the hearing. At [53] to [61] he set out his consideration of the evidence received following the hearing.
6. The evidence provided on the day of the hearing set out the history of the Appellant's medical problems relating to his abdomen. In his letter he stated that the area on which he was operated had been giving him significant pain from 16 September 2017 onwards and it worsened on 21 September 2017. He set out how he contacted the emergency helpline on the evening of Saturday 23 September and was advised to go to St Mary's Hospital. On 24 September he was prescribed antibiotics, as set out by the Judge at [23], and on 25 September was due to attend the Queen Alexandra Hospital.
7. The Appellant stated in his letter:-

"I have not slept at all during the night of the 24th due to constant pain and I intend visiting the Q.A. Hospital this evening as the pain is becoming more intense, needless to say I will not be able to attend the hearing and I humbly urge you to postpone my hearing to a further available date. They have given me an appointment at the QA hospital Surgical unit and due to the weekend I am unable to provide a medical note (fit note), however I am attaching the screenshot of the prescriptions given to me on the 26th of July 2017 and 24th of Sept 2017 as a proof. Since I cannot attend and I do not have any representation, I am unsure as to what is most appropriate action to take in this situation. So, I am enclosing my medical records (Discharge Certificate and relevant documents etc.) and accompanying them with a friend to be delivered to you by hand. I seek your kind consideration and help in this instance of emergency. I will email the Doctor's note as soon as I see my GP at my local (Sunnyside, Fratton Park) surgery."
8. The Appellant provided evidence to show that he had been prescribed antibiotics on 24 September 2017.

9. The Judge reviewed in detail the medical evidence provided by the Appellant and went through his medical history at [27]. The Judge stated at [26]:

“This clinical indication itself therefore would hardly seem to confirm that the appellant was oozing blood from his umbilical area as he claims, and rather raised a complaint regarding the umbilical area as a query to be investigated by abdominal ultrasound.”
10. The Judge decided at [48] that the medical records and prescription of antibiotics did not show that the Appellant was unable to attend due to bleeding and pain in the umbilical area. Reviewing the evidence provided after the hearing the Judge stated:

“This would be out of keeping with what his medical records down to 2015 assert in any case....” [58].
11. It is not for the Judge to decide what is consistent from a medical perspective. I find that the findings at [26] and [58] go beyond his expertise as a Judge. The Appellant provided documentary medical evidence that he had been prescribed antibiotics on the day before the hearing and was due to attend hospital on the day of the hearing. He provided evidence in his letter that he had not slept at all and was unable to attend due to bleeding and pain. He provided corroborative medical evidence that he had had previous problems with his abdomen.
12. Further, the Judge stated that the appeal grounds and the documents provided miss the point of the document which is alleged to be false. However, at no point did the Judge properly consider the fact that the Appellant was not represented, a fact which was clear from the file, and which was repeated by the Appellant in his letter dated 25 September 2017. The Appellant had not had any legal representation when he prepared the appeal, and had therefore had no legal advice as to the documents to provide with his appeal.
13. The issue before the Judge went to the Appellant’s probity regarding the alleged false bank letter. The fact that the Appellant had not addressed this in his witness statement is an argument which went in favour of the Judge not proceeding with the hearing, in circumstances where the Appellant was not represented, and where he had provided evidence that he was unwell.
14. At paragraph [60] the Judge concluded that, in his view, the Appellant’s application for an adjournment was made in order to delay consideration of his appeal. This adverse finding ignores the chronology of the Appellant’s case. The application was made in 2012. A decision was made to refuse the application, which was then withdrawn by the Respondent in September 2013. The Respondent did not make a fresh decision until 2015. The appeal against the 2015 decision was listed in September 2017. Any delay was due not to the Appellant, but rather to the Respondent who withdrew the decision in 2013, and then took a further two years to make a fresh one.
15. Despite a very long consideration of the application to adjourn, the Judge did not take into account that the Appellant was unrepresented. He made adverse findings relating

to delay which did not take account of the chronology of the case. He did not give due consideration to the Appellant's own evidence of his health in the form of the letter. The Appellant provided as much evidence as he could when requesting the adjournment, both of his current medical condition and also his medical history. He followed this up with further letters to the Tribunal as he was concerned as he had not heard anything, and his friend had not taken a receipt for the documents he had delivered. He set out in his letter dated 26 November 2017 that he had been referred to the Queen Alexandra Hospital. He provided a sick note issued to him on 25 September 2017, the date of the hearing, by the Queen Alexandra Hospital indicating that he had abdominal pain. He then wrote again on 29 September 2017 because he was concerned that he could not contact the Tribunal customer services centre. It is clear from this evidence that he was not attempting to prolong the proceedings, but was very anxious at the effect that his non-attendance due to his ill-health was going to have. All of this evidence was before the Judge.

16. Taking all the above into account, I find that the Judge erred in failing to adjourn the appeal with the result that the Appellant has not had a fair hearing.
17. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. Given that the Appellant has not had a fair hearing, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Notice of Decision

18. The decision of the First-tier Tribunal involves the making of a material error of law and I set it aside.
19. The appeal is remitted to the First-tier Tribunal to be reheard.
20. The appeal is not to be heard by Judge Raymond.
21. No anonymity direction is made.

Signed

Date 10 May 2018

Deputy Upper Tribunal Judge Chamberlain