



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00474/2018

THE IMMIGRATION ACTS

Heard at Field House
On 29th June 2018

Decision & Reasons Promulgated
On 12th July 2018

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

Z S

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Martin, instructed by Barnes Harrild & Dyer Solicitors
For the Respondent: Ms Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Afghanistan and claims to have been born in 2002. The Appellant's age was assessed as 17 years old and that he was born on 1 January 1999. He entered the UK clandestinely on 21 February 2016 and claimed asylum on 22 February 2016. His appeal against the refusal of his protection claim was dismissed by First-tier Tribunal Judge P S Aujla on 21 February 2018.
2. Permission to appeal was granted by First-tier Tribunal Judge Brunnen on 28 March 2018 for the following reasons: "The grounds on which permission to appeal is sought submit that the judge erred in law by refusing to grant an adjournment to enable a professional assessment of the Appellant's mental health to be made and by assessing it himself. This is arguable. The grounds submit that the conduct of the hearing by the judge would reasonably have given rise to the mind of a fair-minded observer to the

impression that the judge was biased against the Appellant. This submission is supported by a statement from Counsel who represented the Appellant. This submission is arguable.”

3. In submissions before me it was agreed by the parties that the allegation of bias should have been put to the First-tier Tribunal judge to enable him to comment. It was clear from the court file that this had not been done. However, the error of law hearing could proceed on the basis of ground 1: whether the refusal of the adjournment was unfair.
4. Mr Martin submitted that the judge refused the adjournment because the letter from a counsellor at Compass, a registered charity, lacked credentials and there had been adequate time to obtain evidence of the Appellant’s mental health. He referred me to that letter in which it states:

“I am writing this letter in support of [the Appellant] and his asylum application. It seeks to provide further information about his mental wellbeing. My client has given me consent to share the information contained in this letter. I am a counsellor within the Compass Project which is a specialist counselling service for young refugees, asylum seekers and forced migrants aged 11 to 25. 65% of our clients are happy unaccompanied minors. All counsellors in this service are experiencing in assessing, and supporting this particularly vulnerable client group. We are also experiencing working with complex post-traumatic stress, anxiety, self-harm, suicide, depression and abuse.”

5. It was clear from the letter from Compass that the Appellant had self-referred in May 2017 but also that there had been a deterioration in his mental health until November 2017 when he received one to one support. The level of stress about his asylum claim had a detrimental impact on his mental wellbeing. There were only 46 days between the refusal of his asylum claim and his appeal.
6. Mr Martin submitted that the judge failed to consider whether the refusal of adjournment would result in unfairness and relied on inappropriate factors in refusing the adjournment. The appeal should have been adjourned in the interests of fairness and because it was apparent that the Appellant was a vulnerable witness given his age when he entered the UK.
7. Ms Ahmed submitted that the Appellant claimed asylum in February 2016 and his claim was refused in December 2017. She accepted that the hearing of this appeal was 46 days after the refusal. However, the Appellant had had two years from when he claimed asylum to submit any evidence upon which he relied.
8. Mr Martin submitted that if I found an error of law there should be a further hearing before the First-tier Tribunal in order to submit a report in the Appellant’s mental health. Ms Ahmed did not oppose that course of action.

9. I am satisfied that having read the judge's decision that he failed to appreciate that this Appellant was a vulnerable witness because of his age. Having seen the letter from Compass it was apparent that there could well be a further issue relating to his vulnerability namely his mental health. It was clear that the letter came from a specialist organisation. Therefore, reliance on lack of credentials was not appropriate in the circumstances. The letter came from a registered charity which specialised in dealing with vulnerable individuals in a similar situation to the Appellant.
10. The fact that the Appellant had self-referred in May 2017 did not necessarily mean that there had been ample opportunity to obtain a report on his mental health. It was not clear what he had disclosed to his solicitor and in any event the Appellant's mental health had not deteriorated to such an extent until the crisis point of the refusal of his asylum claim. Taking all matters into account, a mental health report was required.
11. Given the speed with which the Appellant's appeal was listed there was insufficient time to obtain such evidence. The date of the letter from Compass was 22 January 2018 and the date of the appeal hearing was 6 February 2018. It was not relevant that the Appellant's representatives failed to make an application prior to the date of the appeal hearing. The issue was only whether it was fair to refuse the adjournment.
12. The Appellant's obvious vulnerability as a minor and the evidence in the letter from Compass, I find that the judge's refusal of the adjournment was unfair and therefore there was a procedural irregularity amounting to an error of law such that the decision of the First-tier Tribunal should be set aside and reheard by the First-tier Tribunal.
13. I have decided, in accordance with paragraph 7.2 of the Practice Statements of 25 September 2012, that the decision dated 21 February 2018 should be set aside and the appeal remitted to the First-tier Tribunal. None of the judge's findings are preserved.

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 her or any member of her 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

J Frances

Upper Tribunal Judge Frances

Date: 9 July 2018