



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02736/2017

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice
On 4 June 2018

Decision & Reasons Promulgated
On 3 July 2018

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

I M A R
(ANONYMITY DIRECTION MADE)

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant did not appear and was not represented
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer
Interpreter: An interpreter attended but was not needed

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because this is a protection case and there is invariably a risk in cases of this kind that publicity will itself create a risk.
2. This is an appeal against the decision of the First-tier Tribunal dismissing the appellant's appeal against the decision of the respondent on 3 March 2017 refusing

him asylum in the United Kingdom and refusing him leave to remain on human rights grounds.

3. Notice of the hearing before me was sent to the appellant's then representatives, Duncan Lewis & Co Solicitors, and to the appellant at his last known address on 21 May 2018. This is an address where he resided after being released from custody. The information was provided by the Secretary of State and is very likely to be correct. On 30 May 2018 the appellant's former solicitors asked to come off the record because they had lost contact with the appellant. Nevertheless I was satisfied that there had been proper service because notice of hearing was sent to the appellant's then solicitors and also to his known address. The Tribunal could do no more to contact him.
4. I note that the appellant is unrepresented and I specifically draw to his attention that it is sometimes possible to set aside decisions that have been made in the absence of an appellant. If it comes to his attention that an unfavourable decision was made in his case at a hearing that had not come to his attention then it is probably in his interests to notify the Tribunal promptly, but that is a matter for him.
5. The grounds of appeal are drawn by Counsel who appeared at the First-tier Tribunal and make two points. First, that the First-tier Tribunal, it is alleged, was wrong to refuse to adjourn the hearing and the second that the Tribunal made a wrong decision. The grounds say in terms that the findings "were made on the back of material errors of law" and I take this to mean that ground 2 is dependent on ground 1 being made out. Clearly it had to be added because if there was no such allegation then the refusal to adjourn could not have been a material error of law.
6. I decided that it was fair to continue in the absence of the appellant. I am concerned that he may not have been properly well throughout the appeal process but if he chooses not to keep in touch with his solicitors and chooses not to attend the hearing or, possibly, make sure that the Tribunal knows his whereabouts, there is little that I can do. I had no reason to think the situation would be any clearer if I adjourned and decided in all the circumstances to continue with the hearing.
7. The appellant did not attend before the First-tier Tribunal. His solicitors asked for an adjournment because when they visited him close to the hearing date (I make no criticism of this, solicitors are busy and have to make arrangements in advance) they found that the appellant was poorly. He had been on hunger strike and was not fit, in their view, to give evidence.
8. The application for permission for adjournment was refused by someone identified as the "Duty Judge". The hearing was listed for 10 April 2017. The application for an adjournment was refused in the following terms:

"I do not think that the appellant's unilateral act of defiance should prejudice the respondent's interest in achieving finality. There is in any event no medical evidence that the appellant could not be fit for hearing. The adjournment request is refused."
9. I find the tone of the reason for refusing the application to be concerning. I am not sure of the wisdom of referring to an appellant's "unilateral act of defiance" under any circumstances but if it is appropriate it is appropriate after the evidence has

established that such is a fair description. I do not understand how a judge could conclude properly without more evidence that a person who has refused food for a considerable period of time so that he is becoming unwell is acting defiantly rather than exhibiting the symptoms of an illness.

10. The First-tier Tribunal Judge conducting the hearing also refused to adjourn but showed considerably more care than is exhibited in the decision of the Duty Judge.
11. By the time the case came before the First-tier Tribunal there was a report from a Dr Oladimeji Kareem who is identified as a consultant psychiatrist with appropriate qualifications working in the National Health Service.
12. Dr Kareem gave a response to three points drawn to his attention by the appellant's solicitors. Dr Kareem was of the opinion that the appellant was not physically or psychologically fit to give evidence. He was "physically weak, lethargic and drained".
13. He indicated that the appellant required "urgent treatment" to manage his condition and finally that the healthcare wing at the Harmondsworth Detention Centre could not give the appellant the treatment that was necessary. He suggested that the appellant be transferred to a general hospital. He also noted the appellant did not wish to be transferred to such a hospital.
14. The First-tier Tribunal's consideration of the adjournment application is extensive and is described aptly by Mr Howells as a "determination within a determination".
15. The First-tier Tribunal Judge set out the necessary history and the thrust of submissions made. In particular the First-tier Tribunal Judge noted it was the appellant's case that his appeal depended on his credibility and it was very hard to see how credibility could be established if the appellant was not able to give evidence and the appellant was not able to give evidence because he was unwell. First-tier Tribunal Judge noted that it was not clear if the appellant was responsible for his current condition. The judge recorded that the report "touched an underlying mental health issues and depression and suicidal ideas which ideally would need further explanation".
16. The judge then considered the case of **Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC)** which reminded the Tribunal that the issue was one of fairness. There was no statement from the appellant to address the gaps in the evidence or explain the difficulties in his case. It was said that it was not fair to make him continue in his absence when the case was not prepared properly.
17. The appellant's representatives also said that they wanted a country expert.
18. The judge noted a wholly unexplained "medical report" from a hospital that was not signed nor was the author identified and nor was the expertise if any of the author identified. Quite properly the judge regarded this as beings of no assistance whatsoever.
19. The judge gave substantial reasons for refusing the adjournment application having risen to review the evidence. The judge reminded himself of the requirements of paragraph 28 of the Tribunal Procedure (First-tier Tribunal) (Immigration and

Asylum Chamber) Rules 2014 and considered the evidence that had been served. The judge noted that none of the evidence before him indicated any health problems before the appellant embarked upon a hunger strike. It was clear that the appellant's difficulties were because he had refused food and drink. The appellant had had an opportunity to answer questions at interview and an opportunity to make amendments after the interview.

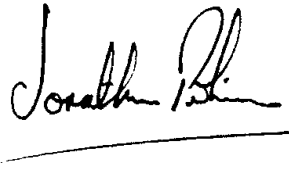
20. At paragraph 28 the judge said:

"I am satisfied that before he became unwell the appellant had adequate notice of his appeal hearing and of the steps he was required to take to prepare for it. I am not satisfied, given the issues and the available background evidence, that a country expert report is required for a fair and just determination of the appeal. I am satisfied that the Appellant has had adequate opportunity to prepare for and attend the hearing of this appeal and that there is nothing to show, were I to adjourn the hearing, whether or when the appellant will be fit to make a statement, to give evidence or to attend a hearing, raising the prospects of further adjournments and in determinate delay with the consequent impact on Tribunal resources, the administration of justice and public confidence in the appeal process. In all the circumstances I was satisfied that I could fairly and justly deal with the case without an adjournment."

21. The judge then went on to consider all of the evidence fully and thoroughly. The judge disbelieved core aspects of the appellant's case and gave lawful reasons for that finding.
22. Permission to appeal was granted by the First-tier Tribunal on 18 April 2018. There was nothing before me other than an explanation for the appellant's solicitors coming from the record.
23. It is impossible to read the file without having a lurking concern that the appellant might be too ill to present his case properly. However, that is based on nothing other than speculation and an excess of caution. As the First-tier Tribunal has pointed out there is no evidence of ill-health before the appellant chose to go on hunger strike. He has had the benefit of experienced solicitors but has not instructed them. I can only go on the evidence before me. The evidence before me shows that an application for an adjournment that was made to the First-tier Tribunal administratively was dismissed in perfunctory terms in a way that I find unattractive and regrettable. It also shows that when the case came before the First-tier Tribunal the First-tier Tribunal Judge independently assessed the evidence carefully and, in my judgment, concluded rationally that the appellant had not given a satisfactory explanation for his absence or shown that it was wrong not to adjourn to enable him to prepare his case better. The important issues were identified in grounds prepared by experienced Counsel and permission was granted but nothing was done. Whatever lurking concern I might have there is no evidence to justify it. The evidence shows the judge considered carefully the adjournment application and made a rational decision which has not been undermined either on its own terms or with the benefit of hindsight even though an opportunity was given to appeal.
24. As I indicated at the start the second ground of appeal adds nothing unless the first is made out. It follows therefore that I dismiss this appeal.

Notice of Decision

The appeal is dismissed.

A handwritten signature in black ink, appearing to read "Jonathan Perkins", written over a horizontal line.

Signed

Jonathan Perkins, Upper Tribunal Judge

Dated: 29 June 2018