



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/01707/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 11 June 2019**

**Decision & Reasons Promulgated
On 19 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**MRI
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. T. Eruwa, Saint Martin Solicitors

For the Respondent: Mr. C. Avery, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Seelhoff, promulgated on 1 April 2019, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse a grant of asylum.
2. As this is an asylum appeal I make an anonymity direction, continuing that made in the First-tier Tribunal.
3. Permission to appeal was granted as follows:-

“In an otherwise careful and focused decision, it is arguable that the judge failed to ensure that the Appellant received a fair hearing by refusing to allow the Appellant an opportunity to be assisted by an interpreter. It is arguable that the Appellant would have felt more comfortable and confident in his first language and that could have been achieved by a period of reasonable adjournment.”

4. I heard submissions from both representatives following which I reserved my decision.

Error of Law Decision

5. I have carefully considered whether the Judge acted unfairly in proceeding without an interpreter.
6. In the grounds of appeal at [4] it states: “Irrespective of the prior request for an interpreter...”. I asked Mr. Eruwa to what request he was referring, given the findings of the Judge that there was no previous request, and given that the grounds of appeal did not allege that the Judge had erred in stating that there was no previous request. At [21] the Judge states:-

“The tribunal had not been advised that the Appellant needed an interpreter and I noted that none was requested in the original appeal form, nor was one requested in the direction form filed by the solicitors a fortnight prior to the hearing.”
7. The Judge goes on to state that Counsel “accepted that the solicitors had not considered [it] necessary” to request an interpreter.
8. I carefully considered the file. I find that the Judge is correct when he states that there had been no previous request for an interpreter. Mr. Eruwa was not able to point me to any document which indicated that a request had been made. The grounds of appeal are at best misleading in alleging that a prior request had been made.
9. Mr. Eruwa stated that there had been a “general request” for an adjournment. This is correct but, when the Appellant’s representatives applied for an adjournment, they attached to the letter the reply notice dated 6 March 2019 where they indicated that no interpreter was needed. The adjournment application did not have anything to do with an interpreter, and further, on the same date as applying for an adjournment, the representatives informed the Tribunal that no interpreter was needed. I find that there is no error in the Judge’s statement that the Appellant had not requested an interpreter prior to the hearing.
10. I have carefully considered whether the Judge properly and fairly considered the Appellant’s request for an adjournment made on the basis that he needed an interpreter. At [21] he states:-

“I noted that according to the Appellant’s immigration history he had been admitted for three years on his initial student Visa which indicated he had been admitted to study at degree level. In response

to a question from me the Appellant confirmed he had completed a postgraduate qualification in the UK.”

11. At [22] he states:

“I indicated that the tribunal would see and if they could accommodate an interpreter on the day of the hearing but when it later became apparent that we could not get an interpreter I indicated that I was not willing to adjourn the matter for an interpreter to attend. The reason for that was that it was clear that the Appellant did speak English to a good level and had chosen not to ask for an interpreter having been given two opportunities to do so earlier in the proceedings. I indicated at that stage that we would keep the issue under review in the course of evidence and that if it became apparent at any stage in the course of the hearing that the Appellant was struggling with the language and the matter could be adjourned at that point.”

12. The Judge gave clear and cogent reasons at [22] as to why he did not consider it necessary to adjourn for an interpreter. Importantly, it was clear the Appellant spoke English to a good level. Further he had chosen not to ask for an interpreter on two previous opportunities. The Judge properly indicated that he would keep the matter under review.

13. At [23] he states:-

“I note that at no point in the hearing did the Appellant appear to struggle with the language and that at the end of the hearing counsel did not raise any concerns about the fact that we had proceeded without an interpreter. Accordingly I was satisfied that no unfairness flowed from this in the course of the hearing.”

14. Mr. Eruwa submitted that the Appellant had been “severely affected” as a result of being without an interpreter, that he had not been able to follow the proceedings, that he had struggled to understand the questions asked, and had not been able properly to articulate himself. I find that these are bare assertions and have no basis.

15. I have no evidence before me from Counsel to support the assertions made by Mr. Eruwa. I have no statement from the Appellant. Given the submissions made by Mr. Eruwa that the Appellant was “severely affected”, I would expect to see some evidence from Counsel to corroborate this, but I have none.

16. Mr. Eruwa also submitted that Counsel “felt obligated to proceed”. Again, there is no statement from Counsel to corroborate the assertion that he felt that he could not raise the issue of the interpreter any further. It is clear that the Judge indicated that the matter was under review, and Counsel and/or the Appellant himself could have indicated during the course of proceedings that the lack of interpreter was causing a problem. Neither made any such indication. It is clear that Counsel did not consider that the Appellant was struggling, or he would have raised concerns. Counsel did not make submissions to the effect that the hearing had not been fair owing to the lack of an interpreter. The Judge was entitled to take into account that there were no such submissions made by Counsel,

nor any attempt to bring a halt to the proceedings on the basis of a lack of understanding.

17. I find that the Judge properly considered whether or not an interpreter was necessary. He satisfied himself that the Appellant's English language skills were good enough to proceed without one. There were no objections raised during the course of the hearing. There is no statement before me now either from the Appellant or from Counsel to corroborate the claims that the Appellant was "severely affected" as a result of being without an interpreter.
18. Further, and significantly, the Appellant has not pointed to anything in the decision which shows that he was put at a disadvantage by the lack of an interpreter. The grounds of appeal do not refer to any particular findings where the Appellant was misunderstood, or where he misunderstood the question that he was being asked, such that the answer as recorded is not that which he gave.
19. Taking into account all of the above, I find that the Judge did not act unfairly in not adjourning. There is no error of law in the Judge not adjourning for an interpreter.
20. At [24] the Judge refers to the application made for an adjournment on the basis that further and better evidence could be obtained from Bangladesh. The Judge states:-

"The counsel also applied for an adjournment at the start of the hearing in order to obtain further and better evidence from Bangladesh. When I asked what evidence they were seeking to obtain he suggested that they wanted to get a confirmation letter from the doctor who had treated the Appellant after he was attacked in 2009. It was explained that the original letter had been lost when the family had moved house. The Home Office did not consider that this letter would add significantly to the case and I agreed with them. It does not seem to me to be reasonably likely that a doctor would retain written records for ten years and it really is an ancillary issue in the case given that the Appellant's family have been able to send extensive allegedly original documents from Bangladesh already."
21. The Judge gave reasons for not allowing an adjournment. Although the grounds of appeal at [5] refer to "all the necessary documents", and the Judge records that the application was made on the basis that the Appellant wished to get "further and better evidence", it is clear from [24] that, when probed by the Judge, it was only one letter which the Appellant sought to obtain, a letter which the Appellant did not know whether it existed or not. The Judge considered the relevance of such a letter, and decided, having discussed it with the Respondent, that it was not necessary and therefore not in the interests of justice to adjourn the hearing. Although the grounds before me refer to "all the necessary documents", there are no details of what documents these are, or what material difference they would have made.

22. I find there is no error in the Judge's decision not to adjourn on the basis of production of a ten year old letter which may or may not have existed.
23. The grant of permission focused on the failure to adjourn. At the hearing before me, Mr. Eruwa also focused on this, and made no reference to the other grounds of appeal. The grounds from [6] to [10] refer not to the Judge's findings, but to the Judge's account of the hearing, the evidence and the submissions, which he set out from [21] to [40]. The findings start at [41]. The grounds do not make any reference to paragraphs [41] onwards and identify no errors of law in the Judge's findings.
24. I have considered the Judge's findings. He deals with the issues which have been set out in the grounds. At [42] he considers the photographs and finds that they are of little evidential value as there is nothing which identifies the location, nothing to support the claim this was a consequence of an attack on the home, and nothing to confirm the date or place. He finds at [43] that, although the photographs were said to be have been sent to the Appellant by e-mail, the e-mail itself had not been provided. There is no error of law in his treatment of the photographs, and the grounds do not allege that he has erred.
25. The Judge addressed the issue of the lawsuit and the court order documents at [46] to [48]. The grounds have not submitted that there is any error in these paragraphs. The Judge considered the evidence and made findings which were open to him. He deals with the attacks at [50]. Again, it is not submitted that there is any error in this paragraph. The Judge considered the evidence and made findings on the basis of that evidence.
26. I have addressed above the issue of the documents. When probed, the Appellant only identified one document which he wished to try to obtain. The grounds before me repeatedly refer to "documents", but without particularising, and without any submission as to their materiality. The Judge did not act unfairly by not adjourning to obtain the one document which was mentioned. There is no error of law in not adjourning so that the Appellant could obtain documents which he did not particularise, and of which the Judge had no knowledge.
27. In relation to Article 8, at [17] the Judge states that Counsel did not argue an Article 8 claim before him either under, or outside, the immigration rules. He also notes that Counsel's skeleton argument did not address Article 8. There is no error in failing to consider Article 8 if it was not pleaded before him.
28. The grounds from paragraph [16] repeat what is said earlier, and further, [22] and [23] refer to "appellants", and seem to have been copied from another case.

29. Taking all of the above into account, I find that the grounds are not made out. In particular I find that there was no procedural unfairness in the Judge not adjourning in accordance with the case of Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC). The Appellant was not deprived of a fair hearing.

Notice of decision

30. The decision does not involve the making of a material error of law and I do not set it aside.

31. The decision of the First-tier Tribunal stands.

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 him or any member of his 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

Date 15 June 2019



Deputy Upper Tribunal Judge Chamberlain