



Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: PA/13439/2018

THE IMMIGRATION ACT

**Heard at Manchester Civil Justice
Centre
On 1st April 2019**

**Decision & Reasons Promulgated
On 11 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

Mr Abbas Ahmad Reda

(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Semega-Janneh of Counsel, instructed by ACN Solicitors

For the Respondent: Mr McVitie, Senior Home Officer Presenting Officer

DECISION AND REASONS

1. The appellant, Mr Abbas Ahmad Reda date of birth 2 February 1984, has dual nationality of Venezuelan and Lebanon. The appellant was born in Lebanon but acquired Venezuelan citizenship in 2005.

2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances I do not consider it necessary to make an anonymity direction.
3. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge A Davis promulgated on the 23rd January 2019 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's protection claim and his claim otherwise based upon based on Article 8 of the ECHR.
4. Leave to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Loke on 27 February 2019. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.

Factual background

5. The appellant was born in Beirut and therefore has Lebanese nationality. The appellant claims that he had problems in Lebanon and therefore left Lebanon in or about 2005. The appellant claims that he left Lebanon in 2005 because Hezbollah, who were in control of major parts of south Lebanon, were accusing him of being a collaborator with the Israelis.
6. It is to be noted that the appellant has stated that he went back to Lebanon in 2010, 2012 and 2015. He had no problems when he went back to Lebanon in 2010 and 2012. In 2015 he claims that his house was occupied by Hezbollah. However it appears that the appellant managed to live in Lebanon for a period of approximately 2 months without any serious problems. Given the background information in respect of Lebanon and the treatment of suspected Israeli collaborators, the fact that the appellant managed to live there without problem was a significant factor.
7. The appellant claims that he was told to leave Lebanon and not to return. However he had claimed that when he originally left Lebanon his name was listed by the Lebanese government as a person that was wanted. The lists of wanted persons were put up at ports and airports. Despite being wanted by the Lebanese authorities and by Hezbollah the appellant managed to leave Lebanon without any problems on 4 occasions, that is the original occasion when he left and the 3 subsequent occasions.
8. In 2005 the appellant went to Venezuela and whilst living there acquired Venezuelan citizenship. The appellant's brother was living in Venezuela. Both the appellant and his brother appear then to have run shops in differing areas of Venezuela.
9. The appellant claims that his problems in Venezuela began and he began to be targeted in Venezuela when he had sacked an assistant

at his shop. The shop assistant had been stealing from the shop. After the assistant was sacked the Appellant claims that the lady's brother confronted him. Thereafter he has claimed that the shop was attacked and he was robbed.

10. The judge noted that the appellant's account was not consistent. The appellant had made reference to having his own shop but also to his brother having a shop, in which the appellant worked. His brother had told the appellant that a gang, ostensibly criminals, were looking for the appellant. The appellant was threatened at the brother's shop or at his own shop that he would be killed or his son would be kidnapped. The appellant has alleged that there was a robbery at a shop and he then went to live with his brother or alternatively or additionally depending on the version of events that there was a burglary at the brother's shop. The burglary may have been whilst the appellant was in Venezuela or whilst he was in the United Kingdom. The appellant's account as noted by the judge was inconsistent with regard to the details. Despite the burglary being at the brother's shop the appellant claimed that he was the target.
11. The appellant had also claimed that the brother of the shop assistant was working in the government in Venezuela but when asked to provide details could not give the name of the man. Whilst he claimed that the man worked in the intelligence service he gave no evidential substance to that claim. He also said that the man worked in the police was not of a high rank but subsequently said he was of an officer's rank.
12. Whatever the substance of the appellant's case the appellant had left Venezuela and come to the United Kingdom ostensibly to visit his sister. The appellant had been granted a visa on 23 October 2015. However he had remained in Venezuela for 4 months after getting the visa.
13. The appellant arrived in the United Kingdom on 10 February 2016. The appellant only claimed asylum on 21 July 2016. In part the suggestion by the appellant being that the robbery had occurred whilst he was here in the UK and it was only post being informed that the robbery had taken place that he claimed asylum.
14. On 14 November 2018 the respondent refused the appellant's claim. The appellant appealed against the decision. The case was listed to be heard on 3 January 2019.
15. After the refusal the appellant consulted Compass Law. He was given an appointment on 30 November 2018. The judge notes at that stage the appellant was being told that the solicitors were unlikely to represent him. He had a further appointment on 10 December when Compass Solicitors informed him that they would not be able to represent him.

16. On 28 December 2018 the appellants spoke to his present solicitors, ACN. In evidence before the judge the appellant had stated, when asked, that he had not done anything after the 30th November or after 10th December until 28 December when he approached the new solicitors.
17. ACN made an application for an adjournment but that was refused. It was being claimed that the solicitors did not have all the documentation and only had part of the Home Office bundle.
18. On 3 January 2019 the case appeared before Judge Davis. Mr Singh on behalf of the appellant renewed his application for an adjournment but Judge Davis having examined the circumstances refused that application and went on to determine the appeal.

Grounds for challenging the decision

19. In essence the basis for the challenge to the present decision is that the judge should have granted a short adjournment to the appellant to enable his new solicitors to put the case properly in order.
20. It is asserted in the grounds of appeal:-
 - a) The solicitors had only received instructions on the 28th December and did not have a complete Home Office bundle. There was reference to a list of documents, which had been submitted to the Home Office, and the solicitors did not have those documents.
 - b) The solicitors were unaware of all the issues relating to and facing the appellant including not being in receipt of the substantive legal interview.
21. The grant suggests that the judge has failed to consider the issue of fairness and whether the appellant would be deprived of a fair hearing.

The Procedure Rules & Case law

22. The appellant seeks to rely upon the provisions of the Tribunal Procedure Rules 2014, specifically rule 2 , which provides: -

Overriding objective and parties' obligation to cooperate with the Tribunal

- 2 (1) *The overriding objective of these rules is to enable the Tribunal to deal with cases justly and fairly*
- (2) *Dealing with the case fairly and justly includes*
 - a) *dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal ceremony:*

b) avoiding unnecessary formality and seeking flexibility in the proceeding;

c) ensuring, so far as practicable, that the parties are able to participate fully in the proceeding;

d) using any special expertise of the Tribunal effectively; and

e) avoiding delay, so far as compatible with the proper consideration of the issues

(3) The Tribunal must seek to give effect to the overriding objective when it

a) exercises any power under these rules; or

b) interprets any rule or practice direction.

(4) Parties must-

a) help the Tribunal to further the overriding objective; and

b) cooperate with the Tribunal generally.

23. In relying upon the overriding objective's the appellant's case that the refusal of the adjournment does not comply with the rule. Reliance is placed upon the case of Nwaigwe [2014] UKUT 00418, the headnote of which provides:-

"If the tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting a material considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct S; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness; was any deprivation of the affected parties right to a fair hearing? See SH (Afghanistan) v SSHD [2011] EWCA Civ 1284."

24. It is clear from the case cited that the issue is not one of irrationality but of fairness.

Consideration

25. The appellant had been told as of the 10th December at the latest that Compass Law could not represent him. The appellant had done nothing until the 28th December to try and find new legal

representatives. The appellant knew that his case was listed and was to proceed on the 3rd January 2019.

26. The appellant cannot just stand by and instruct solicitors at the last minute and expect that the case will be adjourned. Whilst I appreciate that some solicitors may be closed for the Xmas holiday, I do not accept that all representatives would close two weeks before the holiday. The appellant had done nothing until the last possible minute.
27. There was nothing to stop the appellant requesting his file from Compass Law and taking the file and finding new representatives. Judge Davis considered that the appellant had had ample time to put his case in order.
28. The judge was satisfied that the appellant had had adequate time to prepare his case and to instruct another firm.
29. During the course of the hearing before me the respondent's representative made the point that whilst the appellant's representative made submissions on the basis that an adjournment should have been granted but had not identified how the failure to grant the adjournment had unfairly affected the appellant. There was no identification of any adverse consequence or prejudice to the appellant by the refusal of the adjournment.
30. Whilst it has been suggested that the representatives did not have the full bundle, had the appellant acted expeditiously he could have obtained a copy of his bundle from the Home Office and given it to his new representatives, alternatively he could have obtained a copy of his file from his previous representatives and given it to new representatives in ample time to prepare for the hearing. It was the failure of the appellant to act with due expedition which resulted in his new representatives not having a bundle.
31. In making submissions it was suggested that the appellant was only asking for a short adjournment of 5 days. Had the appellant acted with due expedition when he was first told Compass Law could not act for him there would have been ample time for the representatives to instruct new representatives and prepare the file.
32. Accordingly it was the failure on the part of the appellant to act with due expedition in failing to ensure that he had his papers that has resulted in his solicitors not having all the documents at the time of the hearing.
33. It was not being suggested that the appellant required any expert or other background evidence or that there were other documents to be obtained from abroad. The issue in the case related to the evidence

of the appellant and the credibility of the account being given by the appellant.

34. The judge has carefully looked at the appellant's account and raised valid issues about the appellant's account. It is not suggested that the inconsistencies and contradictions identified by the judge were not justified.
35. In the circumstances the appellant had had sufficient time to prepare his case and it was the failure of the appellant to act expeditiously that resulted in his case being in the state that it was. In the circumstances the judge in satisfying himself that the appellant had had sufficient time to prepare his case was considering whether it was fair to proceed with the hearing. As no prejudice has been identified to the appellant's case, the judge was clearly mindful of whether it was fair to proceed. The judge was entitled in the circumstances to conclude that the case should proceed.
36. In the circumstances there is no material error of law in the decision.

Notice of Decision

37. I dismiss the appeal on all grounds.

Signed 

Deputy Upper Tribunal Judge McClure

Date 10th April 2019