



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number PA/14262/2018

THE IMMIGRATION ACTS

Heard at Field House
On 9th April 2019

Decision & Reasons Promulgated
On 11th April 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MR I A P
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr B Kashif of Lexsure Solicitors.

For the respondent: Ms S Chuna, Senior Presenting Officer.

DECISION AND REASONS

Introduction

1. The appellant is a national of Pakistan. He made a claim for protection which was refused. He said he is a Shia Muslim who helped organise a religious procession. This brought him into conflict with another religious

group. The appellant's account was not believed by the respondent. At his screening and substantive interview he said that he suffered from depression and had memory problems.

2. His appeal was heard by First-tier Tribunal Judge Colvin at Taylor House on 25 January 2019. The parties were represented. In a decision promulgated on 12 February 2019 his claim was dismissed. In the decision the judge sets out the appellant's immigration history and details of his claim. The reasons for refusal are then set out. The decision records the submissions and notes that the appellant's representative, Prof Rees, expressed concern about the appellant's mental health in light of his oral testimony.
3. The decision records the appellant giving evidence and responding to cross-examination. Within the papers was a psychologist report. Under the heading 'Findings and Consideration' the judge recorded at paragraph 25 that in the course of the hearing the appellant was having great difficulty understanding the questions and being able to focus so as to provide a relevant answer. The judge referred to his representative's submissions that he was concerned about the appellant's mental health and his capacity to give evidence. The judge went on to say:

"25. It became apparent during the course of the appeal that the appellant was having great difficulty in both understanding the questions that were put to him and being able to focus on an answer that was relevant to the particular question. It was an account of this that Prof Rees made the submission about being concerned as to the appellants' mental health condition and his capacity to give evidence. I am of the same opinion and had reached the same conclusion that it became apparent rather late in the appeal that this is a case where it was essential to have had a full medical report which dealt with the question of the appellant being able to understand the appeal proceedings including giving evidence and answering questions.

26. It means that on the evidence before me I have little option but to acknowledge that the reasons given in the respondent's refusal letter are justified in refusing the appellant's asylum claim as the appellant appeared unable to give either a consistent, coherent or rational answer to questions put in cross-examination based on those findings. However, although this inevitably leads to the asylum appeal being dismissed, I nevertheless consider that this appeal hearing did not provide the appellant with a reasonable and fair opportunity to have his case properly assessed in the absence of medical evidence detailing his capacity to be able to present his case. It is therefore likely that such medical evidence will now be submitted to the Home Office and it may well be appropriate that further consideration be given to the appellant's claim in light of this."

The Upper Tribunal

4. Permission to appeal was granted on the basis that to have proceeded in the circumstance arguably was a procedural error of law. The judge had commented on the appellant's presentation and expressed concerns about his mental health and ability to give evidence. In the application, Counsel for the appellant said that he had applied for an adjournment given the appellant's presentation and so that medical evidence could be produced. In the alternative, he suggested time be allowed so they can consider whether the appeal should be withdrawn and a fresh application made.
5. Ms Cunha accepts that in the circumstances there was a material procedural error rendering the decision unsafe. She suggested that the judge should have adjourned to give the appellant's representatives an opportunity to obtain medical evidence and to consider their position. There was no reference by the judge to the Guidelines in respect of vulnerable witnesses.

Conclusion

6. I agree that the decision as it stands is unsafe because of concerns about the appellant's mental health and ability to give evidence. The judge accepted this but nevertheless continued with the hearing. The judge specifically acknowledged that because of this the appeal hearing did not provide him with a fair opportunity to have his case properly assessed. In light of this acknowledgement the judge clearly erred in continuing.

Decision

The decision of First-tier Tribunal Judge Colvin materially errs in law and is set aside. The decision is remitted to the First-tier Tribunal for a de novo hearing.

Deputy Upper Tribunal Judge Farrelly.

Directions

1. Relist for a de novo hearing in the First-tier Tribunal at Taylor House excluding Judge of the First-tier Tribunal Colvin.
2. The appellant's representative should arrange medical evidence in relation to the appellant's mental ability to give evidence before a tribunal
3. An oral case management review with the representatives in attendance should be held before the substantive relisting. At that stage the medical evidence should be available. If the appellant's representatives conclude that he is a vulnerable witness then they should be in a position to direct the tribunal to the evidence in support of this and the relevant sections of the equal treatment guidance. They should be in a position to advise the tribunal as to suggested steps to facilitate the appellant's participation and the fair progress of his hearing.
4. When a substantive hearing is being arranged the appellant's representative should advise if the appellant will be giving evidence. If so, then a Punjabi interpreter will be required and they should advise the tribunal.
5. A hearing time of around 2 ½ hours is anticipated.

Deputy Upper Tribunal Judge Farrelly.