



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

Appeal Number: IA/30556/2014

THE IMMIGRATION ACTS

Heard at Field House

On 1 July 2015

**Decision & Reasons
Promulgated
On 14 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MUJIBUR RAHMAN
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer
For the Respondent: Mr M Ahmed, Counsel

DECISION AND REASONS ON ERROR OF LAW

1. The appellant's appeal against a decision to remove him from the United Kingdom, made on 14 July 2014, came before First-tier Tribunal Judge Majid ("the judge") on 30 January 2015. In a decision promulgated on 4 February 2015, the judge allowed the appeal.

2. The adverse immigration decision was made shortly after the Secretary of State refused an application for indefinite leave to remain, made by the appellant on the basis that he is a victim of domestic violence. He entered the United Kingdom on 6 October 2011 and was given leave to enter as a spouse. Following the breakdown of his marriage his leave was curtailed, so as to end on 24 June 2013. He submitted an application for indefinite leave as a victim of domestic violence in December that year but this was rejected in February 2014. He made a further application in the same category in June that year, giving rise in due course to his appeal.
3. In the decision, the judge recorded that he had carefully read all of the documents. He went on to find that the appellant's evidence was "unreliable because on his behalf it was asserted that he was depressed". He recorded a conversation between the Presenting Officer and the appellant's representative, Mr Ahmed, and their agreement to "remittal of the case". The judge recorded that he agreed with that submission and he suggested that the appellant should file evidence "one month before the hearing" so that the Secretary of State might consider it. In the final paragraph of the decision, the judge concluded as follows:

"I am persuaded that the appellant's case should be remitted for the respondent to make a new decision under the relevant Immigration Rules as amended. For clarity I must say that, to avoid any anxiety to the appellant meanwhile, my decision is expressed as 'appeal allowed'."
4. The Secretary of State applied for permission to appeal, contending that the judge erred in failing to give adequate reasons for disposing of the appeal by "remitting" the matter to the Secretary of State. There was no finding that the decision was not in accordance with the law or that it was unlawful in any way. The judge appeared to accept that the appellant's evidence was unreliable, as a result of depression, but there appeared to be no medical evidence before the Tribunal and so any finding to this effect was unsafe.
5. Permission to appeal was granted on 23 March 2015. The judge granting permission found that it was arguable that the judge erred in failing to either adjourn the appeal or give proper and adequate reasons for allowing it.

Submissions on Error of Law

6. Mr Duffy said that he relied on the grounds in support of the application. In sending the decision back to the Secretary of State, the judge must have intended to find that it was not in accordance with the law but he had not expressly found this to be so and failed to give reasons supporting his decision. The Secretary of State refused the application for leave in the light of paragraph 289A of the Immigration Rules and also considered paragraph 276ADE.

7. Mr Ahmed said that the decision was free from legal error. At paragraph 7, the judge made a clear finding that the appellant's evidence was unreliable by reason of depression and he recorded that the appellant was struggling to recall minor matters. The judge found that he could not assess the Presenting Officer's submission regarding credibility, as a result.
8. The evidence showed that the appellant suffered from a depressive episode. Although the determination was not as clear as it might have been, the judge did not err in allowing the appeal. Mr Ahmed said that he recalled a conversation with the Presenting Officer on the day of the hearing. The Secretary of State was not satisfied that the appellant suffered from mental ill health and so it was agreed that if documentary evidence of this were made available, together with police evidence supporting the domestic violence case, the Secretary of State ought to consider it.
9. Mr Ahmed said that the appellant had a letter from the Metropolitan Police dated 2 June 2015, seeking proof of his identity. In his skeleton argument, Mr Ahmed drew attention to chapter 8, section 4 of the relevant IDI. Home Office policy required a domestic violence case to be assessed in the light of evidence from one or more of several sources. The appellant had a letter from a family doctor, written in January 2015 and a statement from a community group. The judge had assessed the oral evidence.
10. After the hearing, a psychiatric report was sent, together with the police report form. This was sent first in February 2015 and then to the Upper Tribunal in June this year. The judge had suggested that documentary evidence should be sent to the Secretary of State.

Conclusion on Error of Law

11. Notwithstanding Mr Ahmed's valiant attempt to defend the decision, I have no hesitation in accepting Mr Duffy's submission that the decision contains a material error of law and that it must be set aside. The judge has, with great respect, failed to adequately reason his decision to allow the appeal. His finding that the appellant's oral evidence was unreliable, perhaps because of depression, and the apparent agreement he noted between the Presenting Officer and the appellant's representative that the Secretary of State might consider further evidence do not, singly or in combination, amount to a sustainable, reasoned justification for the decision to allow the appeal.
12. The appellant's application for indefinite leave, as a victim of domestic violence, was accompanied by a few documents. In response, the Secretary of State gave reasons for finding that the requirements of the rules were not met. The judge failed to engage with those reasons and, save for appearing to accept that the appellant was depressed, there was also no real engagement with the appellant's case that the requirements of the rules have been met.

13. If the judge formed the view that evidence of the appellant's mental ill health was capable of having a substantial impact on the case, and if the Presenting Officer appeared reluctant to continue in the absence of such evidence, the proper course might have been to consider an adjournment. It is not clear from the decision why it was that the judge instead allowed the appeal.
14. Mr Duffy said that in the light of the Senior President's Practice Statement, at paragraph 7.2(a), the proper venue for remaking the decision is the First-tier Tribunal. Mr Ahmed agreed. Short directions accompany this decision.

DECISION

15. The decision of the First-tier Tribunal contains a material error of law and is set aside. the decision will be remade in the First-tier Tribunal, at Taylor House, before a judge other than Judge Majid.

No anonymity direction has been applied for and I make no direction on this occasion.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell