



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

Appeal Number: PA/01178/2016

THE IMMIGRATION ACTS

Heard at Centre City Tower

**Decision & Reasons
Promulgated**

On 24 August 2017

On 27 October 2017

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

V M

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Paramjorthy, Counsel instructed by S. Satha & Co,
Solicitors

For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

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 a decision of the respondent refusing him international protection.
3. The grounds of appeal to the First-tier Tribunal were settled by Ms Frances Allen of Counsel. They said unequivocally that the First-tier Tribunal so erred that the decision has to be set aside and the case redetermined. The grounds of appeal to the Upper Tribunal, the First-tier Tribunal having refused permission, settled by Ms Charlotte Bayati adopt and reinforce the points made in Ms Allen's grounds.
4. Broadly there are three areas of criticism. I have decided not to make any findings on the second two. These grounds contend that the Tribunal has made findings of fact that are not justified on the evidence and has not given proper consideration to the medical needs in the event of the appellant's return.
5. I decline to make findings on subsequent grounds because, having taken time to read the decision and the criticism of it carefully, I have come to the conclusion the first ground is made out.
6. Something went wrong in this case. The case was heard on 9 January 2017 and on the day of the hearing the First-tier Tribunal received a small bundle by facsimile from the appellant's then solicitors. The appellant has subsequently instructed different solicitors. The bundle of documents that arrived on 9 January were accompanied by a letter dated 6 January 2017 which was in fact sent by facsimile on that day. The letter contains the paragraph:

"We refer to the above matter and wish to inform the Hon Court that our client has now obtained evidence from Accident & Emergency at The Royal Wolverhampton Hospital NHS Trust about his attempt to commit suicide and we enclose herewith the same together with up to date medical record from his GP which please produce before the Hon Court."
7. This appears to be nonsense. There is no evidence other than this comment in the letter that there has been a suicide attempt and the medical evidence that was sent, as far as I can see, certainly does not support the contention that there was a suicide attempt. Ms Allen's grounds make it quite plain that this was explained to the judge at the start of the hearing by her on her solicitors' instructions. Whilst it is clearly right that Counsel was instructed to explain that the mistake had occurred, it is noteworthy that the appellant's then solicitors did not take the trouble to confirm those instructions in a suitably apologetic letter to the Tribunal. I am perfectly aware that even the most careful and conscientious person can, occasionally, say something that is not right. Typically it occurs when a solicitor is doing something in a hurry. Nevertheless, passing on the client's instructions accurately is a fundamental part of the job and when mistakes occur a proper explanation is generally a very good idea.
8. I will always want to give considerable weight to Counsel's grounds and Ms Allen is an experienced immigration practitioner. Clearly, she would not have said in the grounds that she explained something to the judge unless she was clear in her mind that that is what had happened. It is not what the judge recorded. The Decision and Reasons refers to the point being raised in

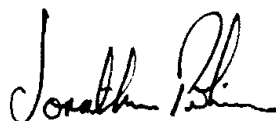
evidence by the appellant. I have read the Record of Proceedings as far as I can and it is quite clear that it was explained at an early stage that the reference to a suicide attempt in the covering letter was wrong. The judge's Decision and Reasons was written up quite soon after the hearing, but I find it probable that he misdirected himself and overlooked the fact that the appellant's solicitors had made a mistake. I can see no answer to the contention in the grounds that the judge was just wrong to say that the appellant's solicitors "should submit medical documents referring to an attempted suicide when that was completely irrelevant". There were no such documents. It was the claim in the accompanying letter that was irrelevant because it was completely wrong.

9. I can see no answer to the contention in the grounds that if the decision was allowed to stand the appellant would have a well-founded sense of grievance that his case may have not been decided fairly, even if in fact it was. In the circumstances I have decided that I must set aside the decision of the First-tier Tribunal and accede to Counsel's grounds that the case be heard again in the First-tier Tribunal.
10. I have considered Ms Aboni's submissions. As I find the decision is unsafe I think it best that I make no comment on them so that the judge deciding the case again comes with a completely fresh mind.

Notice of Decision

The First-tier Tribunal erred in law. I set aside the decision and direct that the case is heard again in the First-tier Tribunal before a different judge.

Signed



Jonathan Perkins, Upper Tribunal Judge

Dated: 25 October 2017