



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03169/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at: Field House
on: 28 September 2017**

**Decision and reasons
Promulgated On: 16
October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**MR BILAL BOUMEDIENE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Bazini of Counsel
For the Respondent: Mr J Collins, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Algeria born on 11 November 1994. He appealed against the decision of the respondent dated 30 April 2008 to refuse to grant him asylum and humanitarian protection in the United Kingdom although he was granted discretionary leave until 19 May 2011 as he was a minor. The appellant appealed on 5 June 2008 which appeal was withdrawn on 20 June 2008. The appellant made an application for further leave to remain on 6 May 2011 and his application was refused and it was decided that the appellant was now an adult and no longer an unaccompanied child asylum seeker. The respondent issued a further refusal decision of 8 March 2016 which made reference to the earlier decision of 30 April 2008 refusing his asylum claim.

2. First-tier Tribunal Judge Osborne gave the appellant permission to appeal on 3 July 2017. The permission Judge gave full consideration to the allegation that there had been an inadvertent procedural unfairness to the appellant because the fax that the appellant's representatives sent to the Tribunal on 2 March 2017, requesting for an adjournment a day before the hearing, was not placed before him. The fax was marked urgent and sent asking that a new hearing date to be listed because the appellant cannot attend the hearing for medical reasons. The Judge found that it is arguable there had been procedural unfairness even if blame cannot be attributable to the Judge for proceeding to prepare and produce the decision.
3. Thus, the appeal came before me.
4. It was agreed on behalf of the appellant at the hearing that the Judge cannot be criticised because their letter requesting that the appeal be listed for another day due to the appellant's unavailability due to medical reasons was not placed before him.
5. The senior presenting officer said that the appellant did not have to attend the hospital on the day of the hearing because the letter from the hospital merely requested the appellant make an appointment to have a heart monitor fitted and he could have made on an appointment another day as there was no suggestion that it was urgent. Mr Bazini on behalf of the appellant argued that the appellant had an accident on 26 February 2017 which had led him to being hospitalised. The appellant social worker sent an email to the legal representative to request that they contact the Tribunal to ask for a different hearing date. The appellant's legal representatives faxed a letter marked urgent and faxed it to the Tribunal.
6. I accept that the Judge did not receive the fax which was evident from his decision because he made no reference to this letter of the appellant's representatives requesting an adjournment. In fact, the Judge stated that the appellant may not even be in the United Kingdom which is contradictory to the fax by the appellant's representative on the morning of the hearing that the appellant has had an accident and cannot attend.
7. Whatever led to the Judge not receiving the fax on the morning of the hearing was, I believe due to administrative error as the fax was sent only a day before the hearing date. It was argued on behalf of the appellant that failure by the Judge to grant him an adjournment deprived him of a fair hearing. It is not inconceivable that in this busy Tribunal, external communication does not reach the relevant files or parties immediately.
8. As stated the Judge cannot be criticised because all he knew at the hearing was that there had been no attendance by the appellant or his legal representatives, although hearing notices had been properly sent.

The Judge was therefore perfectly within his rights not to adjourn the appeal and/or set a new date. Therefore, the question is whether the Tribunal's administrative oversight deprived the appellant of his right to a fair hearing.

9. In **SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284**. In **R(on the application of AM (Cameroon) v AIT 2007 EWCA Civ 131** the Court of Appeal said that unfair decisions on interlocutory matters, such as adjournments or the admission of evidence, can amount to errors of law. Such decisions will have to be grounds for arguing that they display gross procedural unfairness or a complete denial of natural justice.
10. In the instant case that the adjournment request was on the basis that the appellant was unable to attend the hearing because he had a prior hospital appointment to fit a heart monitor on his heart which fax was not placed before the Judge. I find that wherever the fault lies, the purport of it remains that the appellant was deprived of a fair hearing which is his fundamental right.
11. I therefore set aside the decision of the First-tier Tribunal and direct that the appeal be placed before a Judge of the First-tier Tribunal to be heard afresh. I also direct Article 8 be considered adequately.

Decision

The appeal is remitted to the First-tier Tribunal.

I make no anonymity order
I make no fee order

Signed by

A Deputy Judge of the upper Tribunal
2017
Mrs S Chana

Dated 11th day of October