



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03669/2018

THE IMMIGRATION ACTS

Heard at Field House
On 4 September 2018

Decision & Reasons Promulgated
On 18 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

[A E]
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Nizami (Counsel)

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, whose date of birth is 8 January 1990, is a citizen of Egypt. He appeals against a decision made by First-tier Tribunal Judge Devlin ("FtT") promulgated on 23

May 2018 in which the appellant's appeal against the respondent's decision to refuse his protection claim was dismissed.

2. Permission to appeal was granted on 26 June 2018 by First-tier Tribunal Judge I D Boyes. The permitting judge concluded that there was clear merit in the ground that in the space of six weeks the appellant's case went from decision to appeal refusal. It was certainly arguable that the refusal of an adjournment prejudiced the appellant to a degree which was unfair.

Grounds of Appeal

3. The appellant argued that the FtT erred on the following grounds:-
 - (1) The FtT denied the appellant a fair hearing by refusing his adjournment request.
 - (2) There was procedural unfairness.
 - (3) The FtT failed to take material matters into account.
 - (4) There was a material mistake of fact and inadequate reasons were given.
 - (5) The FtT erred by going behind and rejecting a concession made by the respondent.
4. The detailed reasons are set out in the grounds of appeal.

Error of Law Hearing

5. At the hearing before me Mr Avery confirmed that the Secretary of State opposed the appeal, however there was no Rule 24 response produced.
6. Ms Nizami relied on the grounds of appeal and expanded on the same. She emphasised that the FtT failed to grant an adjournment which had been requested on three grounds; namely that the appellant sought to adduce medical evidence of his mental health, an expert report on the background evidence re Egypt was needed and the appellant wanted to obtain further evidence from his Egyptian lawyer.
7. Ms Nizami submitted that it was totally unfair for the FtT to have expected the appellant to be ready and to have obtained that material given that he had received the refusal letter on 4 March 2018, a pre-hearing review had taken place on 4 April and the substantive hearing had taken place on 18 April 2018. There was a period of only six weeks between the refusal and the substantive hearing. In short Ms Nizami submitted that it was not reasonable to expect the appellant to have been prepared for the hearing given that he only became aware of the material issues once served with the Reasons for Refusal Letter.

8. Furthermore, Ms Nizami submitted that the FtT further erred by going behind an acceptance of a material fact in the refusal letter (paragraph 54) made by the Secretary of State, that the appellant was a member of the Freedom & Justice party. The FtT went on to find that the appellant's account in this regard was not credible. The FtT failed to raise this issue or to alert Counsel at the hearing that this issue was of concern. The Secretary of State had not been represented at the hearing either. It was argued that the FtT was wrong to go behind the concession in those circumstances.
9. Ms Nizami relied on and expanded the other grounds of appeal. The detailed submissions are set out in the Record of Proceedings.
10. Mr Avery opposed the application in essence on the basis that the errors were not material. The FtT had correctly proceeded to consider and to refuse to grant an adjournment. The appellant had had ample opportunity to prepare for his appeal notwithstanding that he had received the refusal letter some two years after his application was made. The FtT was perfectly at liberty to find against the appellant as regards membership of his party based on the appellant's oral evidence.

Decision

11. I was satisfied that the FtT erred in law by failing to grant an adjournment. There was in reality a very short period of time between the date of refusal and the listing for substantive hearing. This was a factually complicated case and the appellant ought to have been given an opportunity to prepare for the appeal and to obtain the further evidence that he wished to adduce once having received the Reasons for Refusal Letter which identified the relevant issues. Whilst accepting that in a general sense the appellant would have had some time in which to prepare for his appeal, nevertheless the critical issues will be set out in the refusal letter which the appellant had received only six weeks before the date of hearing. Having regard also to practical matters such as funding and legal aid, it was not realistic to expect that the appellant would have been able to obtain expert and medical evidence by that stage.
12. I further take the view that the FtT erred by failing to put to the appellant matters which it subsequently found to be glaring inconsistencies. The appellant ought to have been given an opportunity to respond to the points raised by the FtT, particularly in circumstances where the respondent was not represented. Furthermore, I take the view that the FtT erred by finding against the appellant as regards his membership of a political party in circumstances where the respondent had made it clear in the refusal letter that this aspect of his claim was accepted. This was further made difficult by the fact that the FtT did not alert Counsel to this point at the hearing and Counsel therefore had no opportunity to deal with the issue at the hearing.

Error of law decision

13. Accordingly, I have decided that there were material errors in law such that I must set aside the Decision and Reasons and none of the findings can be preserved. The appeal

is to be heard afresh before the First tier Tribunal at Manchester (excluding Judge Devlin) on a date to be arranged.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 17.9.2018

Deputy Upper Tribunal Judge G A Black