



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2021-000644**  
**First-tier Tribunal No:**  
**PA/00060/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 03 April 2024**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**AB**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Richardson, Counsel, instructed by Lumine Solicitors  
For the Respondent: Mr E Terrell, Senior Presenting Officer

**Heard at Field House on 27 March 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

**EX TEMPORE DECISION AND REASONS**

## **Introduction**

- 1.** The Appellant appeals against the decision of First-tier Tribunal Judge G Davison (“the Judge”), promulgated on 16 July 2021. By that decision the Judge dismissed the Appellant’s appeal against the Respondent’s refusals of his protection and human rights claims.
- 2.** The Appellant is a Pakistani national born in 1989 who arrived in this country in 2012 as a student. There was at least one extension of leave in that capacity, but ultimately he became an overstayer and then seemingly did nothing until a protection claim was made in April 2019. That claim was refused by the Respondent on 14 May 2020 and it is against that decision that the Appellant appealed to the First-tier Tribunal.
- 3.** The Appellant’s protection claim was essentially that he had been involved in political activities in Kashmir and that this had led to significant problems including, amongst other matters, him being shot. The Appellant asserted that he would be at risk on return to Pakistan.
- 4.** In refusing the protection claim the Respondent in essence disbelieved the Appellant’s account in all material respects, setting out a number of reasons for this in a relatively lengthy reasons for refusal letter.
- 5.** The Appellant then appealed to the First-tier Tribunal. It is important to note that throughout the appellate process in the First-tier Tribunal he was not legally represented.
- 6.** The Appellant attended the hearing before the Judge on 1 July 2020. He informed the Judge that a relatively short time before the hearing he had sought to engage what was described as a “private” solicitor, a Mr Q Hassan, and had expected this individual to represent him at the hearing. The Appellant told the Judge that on the morning of the hearing he had been informed through a third party that Mr Hassan would not in fact be attending, apparently due to attendance at hospital following an accident. The Judge then apparently enquired what potential advantage

Mr Hassan's attendance would have brought to the proceedings. The Appellant responded that whilst he, the Appellant, could answer questions, Mr Hassan had what were described as "a couple of things" which might have been contributed.

7. In essence, the Appellant had been asking for an adjournment in order that Mr Hassan could attend on another occasion.
8. The Judge refused that application, observing that the reasons for refusal letter had raised a number of credibility points and the truthfulness of the account was at the core of the appeal. The Judge noted that the Appellant had attended the hearing and had confirmed that he was in a position to answer questions. Mr Hassan had not been placed on record as acting for the Appellant. The Judge concluded that in proceeding without Mr Hassan's presence there would be "no unfairness" in the proceedings. The Judge was of the view that two solicitors had helped the Appellant to prepare and submit documents upon which reliance was placed. The Appellant had, in the Judge's view, been present and able to answer questions. The Judge accordingly proceeded with the hearing.
9. The specific contents of the Judge's decision are well-known to the parties, I do not propose to set them out in detail here. Suffice it to say that a large number of adverse credibility findings were made, largely, although not exclusively, in line with points raised in the reasons for refusal letter. In summary, the Judge disbelieved everything in respect of the protection claim and dismissed that aspect of the appeal. Article 8 was dealt with in relatively brief terms and the Judge concluded that removal would not be disproportionate.

### **The grounds of appeal**

10. Following the promulgation of the Judge's decision the Appellant engaged his current solicitors and grounds of appeal were drafted by Mr Richardson. These are twofold. First, it was contended that the Judge acted unfairly in refusing the adjournment application, given the particular circumstances with which he was confronted on the day of the

hearing. Second, and in the alternative, the Judge acted with procedural unfairness in failing to expressly put to the Appellant a number of material points in respect of which the Judge ultimately found against the Appellant on credibility grounds. In respect of ground 2, it was said that the context, i.e. the lack of representation on the Appellant's behalf, was an important consideration and that the points should have been made.

### **The hearing**

**11.** In advance of the error of law hearing both representatives had been able to listen to an audio recording of the hearing before the Judge. At the hearing itself I received extremely helpful submissions from Mr Richardson and Mr Terrell, for which I am grateful. These are a matter of record and with all due respect I do not intend to set those out here.

### **Conclusions**

**12.** I conclude that the Judge did err in law as contended for in the two grounds of appeal. In so concluding I bear in mind a need for appropriate judicial restraint before interfering with the decision of the Judge below, but I also bear in mind the importance of ensuring fairness and particularly that such fairness is very much context-specific.

**13.** In respect of ground 1 the context in the present case was that although it appears that Mr Hassan may not in fact be a solicitor, the Judge was unaware of that possibility and the Judge did not reject the credibility of the Appellant's assertion that he had asked Mr Hassan to come and attend. Nor did the Judge expressly reject the explanation given by the Appellant as to why Mr Hassan had not attended on the day.

**14.** In this case the Appellant had not been legally represented throughout the appellate proceedings, with a consequence that, as far as I can discern, there was, for example, no witness statement prepared responding to the reasons for refusal points. On the face of it the Appellant had attended the hearing in the expectation that someone would be there to represent him. The fact that the Appellant was present

and able to answer questions in my judgment did not of itself 'cure' the Judge's decision to proceed notwithstanding the absence of representation.

- 15.** Put bluntly, answering questions from either a judge or a Presenting Officer is one thing, but there is at least a reasonable expectation that a representative would be in a position to lead certain evidence and/or make submissions and/or challenge points put forward by the Respondent.
- 16.** On the face of the decision and with reference to paragraph 5 thereof, it is with respect, difficult to see what help the two solicitors referred to by the Judge had actually provided in respect of the preparation for the appeal hearing given the apparent absence of any witness statement and/or, for example, a skeleton argument.
- 17.** I agree with Mr Richardson's point that whilst litigation in this jurisdiction is adversarial, this must be placed in context, particularly where fairness is concerned.
- 18.** Having regard to relevant authorities which have been summarised in the relatively recent judgment in Abdi v ECO [2023] EWCA Civ 1455, I conclude that the Judge did not act fairly by refusing to adjourn the case, given the particular facts of this case. On that basis alone it is clear that the error of law was material to the outcome as a whole and that the Appellant can succeed in his appeal on this basis alone.
- 19.** Although it is not strictly necessary for me to address ground 2, I will do so for the sake of completeness. As a starting point I acknowledge Mr Terrell's forensic analysis of the Judge's decision in the context of the reasons for refusal letter and in my view he was right to have emphasised the point that just about all of the matters taken against the Appellant by the Judge were indeed raised in that letter. In many cases that would be a complete answer to a procedural fairness challenge.

- 20.** However, in the present case the Judge was faced with the particular circumstances of the Appellant which I have already referred to: unrepresented throughout; unrepresented at the hearing; and no proper preparation for the appeal hearing, including in particular any written responses to the reasons for refusal letter.
- 21.** Fairness, I emphasise once again, is context-specific. In the context of this particular case in my view it was incumbent on the Judge, whether through his own intervention or by ensuring that the Presenting Officer did so, the particular matters raised in the reasons for refusal letter should have been put expressly to the Appellant in order that he could properly understand what they were and have an opportunity to provide answers.
- 22.** It may be that many of the answers would have been unsatisfactory, and clearly there were a good deal of adverse points raised against his protection claim. However, in my judgment that possibility does not 'cure' the error and, with reference to paragraph 38 of Abdi, the overall outcome would not inevitably have been a dismissal of the Appellant's appeal.
- 23.** For those reasons I conclude that ground 2 is also made out.

### **Anonymity**

- 24.** It is appropriate to maintain the anonymity direction made by the Judge on the basis that this case concerns protection issues and will now be reheard.

### **Notice of Decision and disposal**

- 25. The Judge's decision is set aside.**
- 26. As the errors of law relate to the fairness of the proceedings below, it is appropriate to remit the case to the First-tier Tribunal (Hatton Cross hearing centre).**
- 27. There will be no preserved findings of fact.**

**28. The remitted hearing will not be conducted by Judge Davison.**

**H Norton-Taylor**

**Judge of the Upper Tribunal  
Immigration and Asylum Chamber**

**Dated: 2 April 2024**