



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004612
First-tier Tribunal No: PA/00373/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

15th January 2025

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN
DEPUTY UPPER TRIBUNAL JUDGE RIPLEY

Between

JS (INDIA)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Hawkin, Counsel, instructed by GSJ Solicitors

For the Respondent: Ms S McKenzie, Senior Presenting Officer

Heard at Field House on 14 January 2025

ANONYMITY ORDER

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.

DECISION AND REASONS

Introduction

1. The appellant appeals a decision of First-tier Tribunal Judge Plowright (“the Judge”) dismissing his asylum and human rights appeal by a decision sent to the parties on 14 August 2024.

Anonymity Order

2. The Judge issued an anonymity order. Neither representative requested that the order be set aside. As the appellant currently seeks international protection, we consider that at the present time his private life rights, protected by article 8 ECHR, outweigh the public right to be informed that he is a party to these proceedings. The latter right is protected by article 10 ECHR. In the circumstances, we consider it appropriate that the anonymity order continue.
3. The anonymity order is detailed above.

Relevant Facts

4. The appellant is a national of India who entered this country as a visitor in November 2013. He overstayed, and on his case has remained in this country ever since. On 14 September 2018, a positive reasonable grounds decision was issued, accepting that the appellant may be a victim of modern slavery. The following month the appellant claimed asylum. Over five years later the respondent refused the application by a decision dated 28 December 2023.
5. On the information available to the Judge, the appellant appealed the respondent’s decision and on 10 January 2024 requested by Form IAF5 that his appeal before the First-tier Tribunal be decided on the papers.

Grounds of Appeal

6. The appellant advances two grounds of appeal:
 - i. An unregulated immigration advisor submitted the IAFT-5 and contrary to the appellant's express request a paper hearing was sought. This ground is advanced as a procedural error challenge, though we consider it can properly be considered a procedural fairness challenge.
 - ii. The Judge (a) failed to lawfully consider the evidence presented in the round; (b) failed to consider that the appellant is a victim of human trafficking; (c) failed to consider the appellant as a vulnerable witness; and (d) failed to expressly consider whether the paper consideration should properly be converted into an oral hearing.
7. Upper Tribunal Judge Lodato granted the appellant permission to appeal on both grounds by a decision sent to the parties on 16 October 2024.

Evidence filed with the Upper Tribunal

8. In accordance with a direction issued by the Upper Tribunal, the appellant filed a witness statement addressing, *inter alia*, his engagement with Mr Atef Mohammed, dated 13 January 2025, and a copy of the complaint form he submitted to the Immigration Services Commissioner's Complaints Scheme in respect of Mr Mohammed, dated 30 November 2024. Additionally, the appellant has filed and served a decision of the Single Competent Authority that he is a victim of modern slavery, dated 7 August 2024.
9. The appellant states that having received the respondent's refusal decision he sought legal representation. The appellant observed an advertisement by Mr Mohammed at his shop in West London that he undertook immigration work. Having spoken to a friend, who vouched for Mr Mohammed's services, the appellant paid him £640 to prepare grounds of appeal and to file the requisite appeal form. The sum paid included £140 to cover the fee for an oral hearing. Subsequently, the appellant received a letter from the First-tier Tribunal detailing that he had not complied with directions and had not filed documents in support of his appeal. He tried to call Mr Mohammed, but his phone was switched off. The appellant attended Mr Mohammed's shop, which was closed, and a neighbouring shop owner informed him that Mr

Mohammed had closed his business approximately one month earlier. The appellant then instructed his present solicitors, who secured documents from the respondent but not a copy of the appeal form. Both the appellant and present solicitors understood that the fee had been paid for an oral hearing, which was not the case.

10. Consequent to receiving the First-tier Tribunal decision the appellant filed a complaint in relation to Mr Mohammed with the Office of the Immigration Services' Commissioner, which is presently outstanding.
11. Ms McKenzie took no issue with the veracity of the appellant's assertion for the purpose of this hearing.

Analysis

12. Ms McKenzie confirmed on behalf of the respondent that upon considering the appellant's witness statement and accompanying complaint form there was no opposition to the panel setting aside the decision of the Judge and remitting the appeal to the First-tier Tribunal. We are grateful to Ms McKenzie.
13. Whilst it is proper that we acknowledge that the Judge proceeded in the absence of any knowledge as to the circumstances surrounding the filing of the IAFT-5, we are satisfied that procedural unfairness arises in this matter consequent to the actions of an unregulated immigration advisor who has denied the appellant of the oral hearing he seeks. We are mindful that the provision of immigration services and the offer (advertising) of provision of immigration service by an unregulated person are criminal offences: sections 91 and 92B of the Immigration and Asylum Act 1999.
14. In the circumstances, the only proper course is for the decision of the First-tier Tribunal to be set aside in its entirety.
15. We take this opportunity to observe that there may be merit to the appellant's contention that the Judge should have given thought to the fairness of considering the appeal on the papers rather than directing an oral hearing. We observe the guidance in *SSGA (Disposal without considering merits; R25) Iraq* [2023] UKUT 00012 (IAC). Any decision whether to decide an appeal without a hearing is a judicial one to be made by the judge who decides the appeal without a hearing. The mere fact that a case has been placed in a paper list does not and cannot detract from the duty placed on the judge before whom the case is listed as a paper case to consider for himself or herself whether one or more of the exceptions to the general rule apply. If, having considered rule 25 of the Tribunal Procedure (First-tier Tribunal)

(Immigration and Asylum Chamber) Rules 2014, the judge is not satisfied that at least one of the exceptions in rule 25(1)(a) to (g) is satisfied, the judge must decline to decide the appeal without a hearing and direct the administration to list the appeal for a hearing.

16. However, having identified a material error of law in respect of ground 1, we are not required to determine the second ground.

Remittal

17. We observe paragraph 7.2 of the Senior President's Practice Statement for the Immigration and Asylum Chambers as well as the guidance in *AEB v Secretary of State for the Home Department* [2022] EWCA Civ 1512; [2023] 4 WLR 12, and *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 46 (IAC); [2023] Imm AR 55. Consequent to the decision of the First-tier Tribunal being set aside on procedural unfairness grounds, the only proper course is for this matter to be remitted to the First-tier Tribunal.
18. The First-tier Tribunal can consider the issue of vulnerability at the next hearing.
19. Hatton Cross is the closest hearing centre to the appellant's home. We consider it appropriate that the hearing is held at that centre.

Notice of Decision

20. The decision of the First-tier Tribunal sent to the parties on 14 August 2024 is set aside in its entirety consequent to a material error of law.
21. The appeal is remitted to the First-tier Tribunal sitting at Hatton Cross, to be heard by any judge other than First-tier Tribunal Judge Plowright.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber
15 January 2025