



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

Appeal Number: AA/11198/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 31st July 2015**

**Decision & Reasons
Promulgated
On 14th August 2015**

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR A H M M S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Soltani of Iris Law Firm (Gateshead)
For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal By the Appellant A S, with permission, against the decision of a First-tier Tribunal (Judge Shimmin) in which it dismissed the Appellant's appeal against the Secretary of State's decision to refuse his application for asylum.
2. The Appellant is a citizen of Egypt born 30th August 1996. He entered the UK clandestinely on 7th May 2014, aged 17 years. He claims he cannot return to Egypt on account of his fear from the security forces there. He states that his father was a member of the Muslim Brotherhood, and he the Appellant, was arrested and tortured by the security services on account of his father's involvement with that organisation.

3. Because of his age, the Appellant was placed in the care of North Yorkshire County Council and was accommodated in the Scarborough area. He was assigned a youth worker.
4. The Appellant's appeal in the First-tier Tribunal was set down for hearing at Bradford on 26th January 2015, before Judge Shimmin. The Appellant did not attend, nor did any representative attend on his behalf.
5. Judge Shimmin after making what enquires he could, proceeded with the hearing in the absence of the Appellant and went on to dismiss the appeal. No criticism attaches to the Judge in his proceeding as he did. He made great efforts to ascertain why the Appellant had not attended as shown in [10] of his decision.
6. The Appellant sought permission to appeal and the grant of permission neatly sets out the issue before me. It is reproduced here below.

"It is submitted that the Appellant was unable to attend the hearing because his youth worker who had agreed to take him to the venue was ill and due to the Appellant's limited understanding of English he was confused and misinterpreted the necessity to be there. It is an arguable error of law that had the Appellant been able to attend, the evidence may have made a material difference to the outcome or to the fairness of the proceedings."

Thus the matter comes before me.

The UT Hearing

7. Both representatives made submissions at the hearing before me. The Appellant also attended accompanied by a youth worker (not the one referred to in the grant of permission). It became apparent in the course of hearing from the Appellant and his youth worker, that arrangements had originally been made for the Appellant to be brought to the hearing on 26th January 2015 by his youth worker. The youth worker fell ill and according to the youth worker who accompanied the Appellant to the UT hearing, a letter was written to the Appellant informing him that his youth worker was ill. Regretfully no check was made on whether the Appellant understood the position, nor was any check made to ensure that the Appellant attended the hearing in any event.
8. Having considered that evidence, I am grateful to Mr Diwnycz who indicated that he accepted, that despite the terms of the Rule 24 response, it was apparent the Appellant had been let down by the Youth Services. Mr Diwnycz accepted that the Appellant should not be punished for that. I agree with those sentiments and for those reasons I am satisfied that the Appellant has not had the opportunity of a fair hearing, although I emphasise (as did both representatives before me) no criticism attaches to Judge Shimmin. Nevertheless I informed the parties that Judge Shimmin's decision is set aside for legal error.

9. Both representatives submitted that as the decision could not stand, they were in agreement that the appropriate course of action in this appeal is to remit the matter to the FtT for a full hearing. No findings of fact are preserved.

Decision

10. The decision of the FtT is set aside for legal error. The matter is remitted to the FtT (not Judge Shimmin) for a full rehearing with all matters at large.

Direction regarding anonymity - Tribunal Procedure (Upper Tribunal) Rules 2008 Rule 14

The appellant is granted anonymity throughout these proceedings, unless and until the Tribunal directs otherwise. No report of these proceedings shall directly or indirectly identify her or any member of their 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.

Signature

Judge of the Upper Tribunal

Dated