



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/11518/2014**

THE IMMIGRATION ACTS

Heard at Field House
On 4 September 2015

**Decision and Reasons
Promulgated
On 14 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**M E
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Mohzam (solicitor), Lawrence & Co, solicitors
For the Respondent: Mr C Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant. In doing so I preserve the anonymity direction made when this case called before the First-tier Tribunal.

2. This is an appeal by the appellant against the decision of First Tier Tribunal Judge Coffey promulgated on 29 April 2015 which dismissed the appellant's appeal on asylum grounds and under Article 8 ECHR.

Background

3. The appellant was born on 1 February 1986. He is a Jordanian national who claims to be of Palestinian background. He claimed asylum on 27 June 2014, claiming to have a fear of persecution of the Bani Sakhr tribe because he pursued an extra-marital relationship with a woman from that tribe. The appellant claimed that the Bani Sakhr tribe had influence over the Jordanian authorities, so he also feared the Jordanian authorities. The appellant claimed that his rights in terms of Articles 2, 3 and 8 of ECHR would be breached by his removal from the UK. On 3 December 2014, the respondent refused the appellant's application.

The Judge's Decision

4. The appellant appealed to the First Tier Tribunal. First Tier Tribunal Judge Coffey ("the Judge") dismissed the appeal against the respondent's decision.

5. Grounds of appeal were lodged and on 27 May 2015, First Tier Tribunal Judge Page gave permission to appeal, stating *inter alia*:

"The grounds of appeal argue that the appellant was ill during the hearing and he may have been deprived of a right to a fair hearing if his illness caused him to lack concentration or to follow the hearing properly. It is argued that the judge failed to ascertain whether the appellant was fit to give evidence. Other grounds are also argued that can be considered by the Upper Tribunal. It is arguable that the matters raised in the grounds go beyond disagreement and identify arguable errors in proceedings so permission to appeal is granted."

6. The appellant's solicitor, Mr Mohzam, argued that the appellant was significantly unwell throughout the hearing and that the failure of the judge to ask the appellant whether or not he was fit to continue the case amounts to a material error of law because it deprived the appellant of a right to a fair hearing and so was a procedural irregularity (Grounds 1 and 2 of the grounds of appeal). Mr Mohzam relied on the appellant's witness statement and argued that because there had been breaks in the course of the appellant's evidence to allow him to visit the bathroom, it was obvious that the appellant was unwell and should not have been forced to continue with the hearing. Mr Mohzam moved the third ground of appeal, stating that it was a crucial part of the appellant's claim that he is a Jordanian of Palestinian origin and that the immigration judge has not made any findings in fact in relation to his assertion that he is of Palestinian origin.

7. Mr Mohzam moved the fourth ground of appeal, arguing that between [45] and [49] of the determination, the judge failed to carry out an adequate balancing exercise. Mr Mohzam argued that at [47] the judge was wrong to find that the appellant was not involved in active family proceedings when adequate evidence had been produced to demonstrate that he is pursuing an action for contact to see his son and that, in any event, the judge has not explained why he rejected the oral and documentary evidence about the existence of family proceedings to which the appellant is a party.

8. Mr Tarlow for the respondent resisted the appeal, relying on the respondent's Rule 24 notice dated 4 June 2015. He relied on (and lodged) an

extract from the Home Office Presenting Officer's note which indicated that, in the middle of cross examination, the appellant had to leave the court to visit the bathroom and, when he returned, the Judge asked the appellant if he was well enough to continue. The appellant confirmed that he was well enough to carry on. He argued that the findings contained within the determination are findings which were open to the judge to make on the evidence placed before him and that the determination does not contain material errors of law, but it sets out findings of fact and conclusions which were open to the judge.

Analysis

9. The first and second grounds of appeal drive at procedural irregularity, arguing that the appellant was too unwell to participate meaningfully in the proceedings or follow the proceedings, so that a procedural unfairness has resulted. It is not disputed that the appellant's evidence was interrupted on two occasions whilst the appellant went to the bathroom. Mr Tarlow produced an extract of a note made by the Home Office presenting officer at first instance which indicated that the judge asked the appellant if he was well enough to continue. Mr Mohzam appeared to be surprised by the production of the note from the Home Office presenting officer and told me that he was not familiar with the notes taken by Counsel who represented the appellant before the First Tier and, at the close of the hearing, asked to be allowed some days to produce a written submission after he had discussed this matter with Counsel who initially represented the appellant.

10. Mr Mohzam conceded that grounds of appeal 1 and 2 have always related to the way the appellant was treated in the course of the hearing. He conceded that adequate notice of the time, date and place of today's appeal had been given. Mr Mohzam's application for further time to produce a written submission was made after all submissions had been made and after Mr Mohzam told me he had nothing further to add. I told Mr Mohzam that I would determine this case on the basis of the material already placed before me.

11. The judge's own record of proceedings is in two parts. One is a hand written schedule of events with times noted next to each event. The second part is a detailed, type written record of the evidence. The detailed, type written record does not contain any note of the interruptions to the evidence. The handwritten record of proceedings, however, does. The judge's handwritten record of proceedings noted that at 11.52am, the appellant felt unwell and sought permission to leave, and that the hearing recommenced at 11.55am. At 12.45, the appellant left the hearing, feeling unwell. At 13.00, the hearing was adjourned for lunch and recommenced at 14.02, ending at 14.40. The Home Office presenting officer's record that the appellant was asked by the judge whether he was fit to continue is not reflected in the judge's own record of proceedings.

12. What is clear from the record of proceedings is that the appellant was represented by Counsel and that the appellant's Counsel did not make any application to adjourn, nor did the appellant's Counsel advise the Judge that the appellant was so unwell that he could not participate in or follow the hearing.

13. The weight of reliable evidence before me indicates that the appellant was unwell on the date of the hearing, but that his illness did not prevent him from participating in the hearing and offering his oral evidence. It is clear from the judge's own record of proceedings that the judge had no concerns about the appellant's ability to participate in the hearing. The judge records that the appellant's evidence was interrupted and that the appellant left the hearing. The judge was in a position to observe the appellant and to listen to the appellant. He was in a good position to determine whether or not the appellant's illness interfered with his ability to proceed with the hearing.

14. It is the appellant's own case that he told his Counsel that he was unwell and Counsel provided him with paracetamol. The appellant's own Counsel knew the appellant's circumstances and not only chose to proceed but did not make any application to adjourn.

15. The weight of reliable evidence indicates that the appellant had a fair hearing. It is beyond dispute that the appellant was allowed to interrupt his own evidence so that he could deal with the symptoms of his temporary illness, collect himself and return to the proceedings. The weight of reliable evidence indicates that the appellant chose not to tell the Judge that his suffering was such that he could not proceed. The hearing in this case took place on 26 March 2015. The appellant produces a witness statement dated 24 August 2015, providing the details of his illness of the day of the hearing, but no medical evidence at all is produced to indicate the nature, extent and effect of the appellant's temporary illness.

16. I find that there is no merit in the first and second grounds of appeal and that although the appellant might have had some ailment on the date that his hearing took place, there has been no procedural unfairness.

17. In HA (Conduct of hearing: evidence required) Somalia [2009] UKAIT 00018 the Tribunal said that where a party who was represented at the hearing seeks reconsideration on the basis of the way it was conducted, reconsideration will not normally be granted without evidence on the point in question by way of a statement of truth from the representative, to which should be attached either a copy of any note on the point made by the representative at or near the time of the hearing, or an explanation of why no such note is available. Although the appellant relies on his own witness statement, no support is provided for the contents of his statement. No medical evidence is produced, and importantly, there is no statement of truth for either the appellant's solicitor nor from counsel for the appellant.

18. Having rejected the first and second grounds of appeal, I find that there is merit in the third and fourth grounds of appeal. It is a crucial part of the appellant's claim that he is a Jordanian national of Palestinian ethnicity. It is at the very core of the appellant's claim that he has pursued an extra-marital affair with a woman from the Bani Sakhr tribe. At [41], the judge briefly mentions the objective evidence relating to honour killings and at [42], he refers to the "*...the diminished rights of many Palestinians in Jordan...*" but the judge does not make any findings in fact in relation to the appellant's claimed extra-marital affair, nor the claimed membership that the young woman had in

the Bani Sakhr tribe. In short, there are inadequate findings in fact in relation to the core aspects of the appellant's claim.

19. It is a crucial part of the appellant's claim that he is the pursuer in proceedings in the family courts for contact to his son. At [46], the judge accepts that participation in family court proceedings may lead to a grant of discretionary leave under Article 8 but although (at [47]) the judge says that he is not satisfied that sufficient evidence was produced that there are active family proceedings, the judge does not explain why he rejects the evidence that was produced of the existence of the pursuit of a contact action.

20. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

Findings of Material Error

21. I therefore find that material errors of law have been established and that the Judge's determination cannot stand and must be set aside in its entirety. All matters to be redetermined afresh.

Remittal to First-tier Tribunal

22. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

23. In this case none of the findings of fact are to stand and the matter will be a complete re hearing.

24. I consequently remit the matter back to the First-tier Tribunal to be heard afresh before any First-tier Immigration judge other than Judge Coffey.

Signed

Date

Deputy Upper Tribunal Judge Doyle