



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03180/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Manchester, Piccadilly
Reasons Promulgated
On 29th September 2017
2017**

**Decision &
On 17th October**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between

**MR HUSAM ELAHADI BELAID ELAKREMI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Patel (Solicitor)

For the Respondent: Mr Bates (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge

Bannerman promulgated on the 6th January 2017, in which he dismissed the Appellant's asylum appeal. The Appellant had claimed asylum on the basis that he was a Gaddafi supporter and a black Libyan of Tawergha ethnicity, who would be a bit risk of persecution upon return to Libya.

2. Permission to appeal was granted by Upper Tribunal Judge Rimington on the 16th May 2017. The Grounds of Appeal contended that the Judge:

- (i) failed to consider the evidence in regard to the Appellant's Tawergha ethnicity adequately, and that bearing in mind the country conditions it was unreasonable to expect DNA evidence;
- (ii) failed to address the photographic evidence, and simply dismissed the main documentary evidence such as a birth certificate;
- (iii) failed to consider the witness evidence properly bearing in mind that the Judge refused an adjournment because the Appellant's witness was sick;
- (iv) failed to engage with recent country background material.

3. Judge Rimington found that Grounds (i) to (iii) appear to be interlinked and that bearing in mind the crux of the claim was ethnicity of the Appellant it was arguable that the Judge had gave inadequate reasons for his treatment to the evidence, in particular in relation to the witness statement following the refusal of the adjournment to allow the witness to attend. She stated that the criticism of the statement might indicate the importance of allowing the witness a further opportunity to attend. She also found that Ground (iv) was arguable.

4. Following discussions in the Upper Tribunal, Mr Bates on behalf of the Secretary of State conceded that the First-tier Tribunal Judge had not adequately dealt with the witness statement of Mr Hussain Adam, in particular the contents of paragraph 4 of the statement, in which Mr Adam had said that he had known the Appellant and his family for almost 10 years

and who states that the Appellant definitely was from the Tawergha tribe and that he knew Hussain's family were highly involved with Gaddafi's regime and that he knew that something had happened to the Appellant's brother and his father was missing. Mr Bates also conceded that there was an element of unfairness in the way in which the Judge had dealt with the matters regarding witness, in that although the Judge said that he had taken account of the case of Nwaigwe (an adjournment: fairness) [2014] UKUT 0418, when refusing the adjournment to allow the Appellant's witness who was said to be suffering from diabetes and was dizzy and sick and was unable to attend. The Judge had borne in mind that the Home Office Presenting Officer said that she would not have much to ask the witness anyway, as they had a statement from him and that the Judge had stated in [56] that having regard to the witness statement including that he had been granted refugee status, the witness statement being in short compass that they could proceed in the interests of justice, the Appellant being asked questions about his witness, as the witness was not going to be examined in any great detail by the Respondent, who was happy to proceed in the absence of the witness anyway. The Judge went on to at [66] to reject the evidence of the witness by stating "*even where his witness statement can be considered, there is no indication why, in it, Mr Adam believes the Appellant's is Tawerghan. Importantly I note that Mr Adam's statement in paragraph 2 says that they usually meet once or twice a month whilst the Appellant gave evidence they would meet every day. That stark and glaring difference is just one example of where I find the Appellant's account to be incredible and significantly damaging to his claim to be Tawerghan.*"

5. I agree with the concession made by Mr Bates that there was an element of procedural unfairness in the way that the Judge dealt with that witness. With the greatest of respect to Judge Bannerman, the question was not whether or not the Respondent was happy to proceed in the absence of the witness, as this was the Appellant's witness and the Respondent undoubtedly would have been happy to proceed in the absence of the Appellant's witness. However, the point remained that the Appellant's representative was not happy to proceed in the absence of the witness, nor was the Appellant, and it

was the Appellant who sort the adjournment. Either that witness evidence was accepted, or it was being challenged by the Secretary of State. If in fact it was being challenged, particularly in regards to the witness's claim that he had known the Appellant for ten years and he was Tawerghan and that the Appellant's family was highly involved in the Gaddafi regime and that his brother and father were missing, the fact the Respondent was happy to proceed was not the issue. The witness evidence from Mr Adam was potentially vital evidence. The Judge has not adequately considered the potential prejudice to the Appellant in not granting an adjournment, in order to allow his witness, who was ill, to attend. She not accept that evidence, in circumstances where the case had not been adjourned to allow that witness to give evidence, on the basis that the Respondent did not intend to ask many questions, I find was in fact unfair to the Appellant.

6. In such circumstances, I do find that the decision of First-tier Tribunal Judge Bannerman does contain a material error of law, and I therefore set aside the decision in its entirety.

7. The matter is to be remitted back to the First-tier Tribunal for rehearing, as was agreed between the parties given the fact that the decision will have to be completely remade, before any First-tier Tribunal Judge other than First-tier Tribunal Judge Bannerman.

Notice of Decision

The decision of First-tier Tribunal Judge Bannerman does contain a material error of law, and I therefore set aside the decision in its entirety;

The case is to be remitted back to the First-tier Tribunal for rehearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge Bannerman;

I make no anonymity direction, no such direction having been made by the First-tier or sought before me.

Signed

RFM^cGinty

Deputy Upper Tribunal Judge McGinty

Dated 30th September 2017