



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/04770/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 11 April 2018

On 18 April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MANUELL

Between

**Mr FAWAD ALKOZAI
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Briddock, Counsel
(instructed by Rahman & Company, Solicitors)
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by Upper Tribunal Judge Plimmer on 12 February 2018 against the decision and reasons of First-tier Tribunal Judge Lawrence who had dismissed the Appellant's protection, humanitarian protection and human rights appeal. The decision and reasons was promulgated on 3 August 2017.

2. The Appellant is a national of Afghanistan, who gave 10 March 1992 as his date of birth. He claimed asylum on 16 November 2015, which was refused on 22 April 2016. The Appellant has an older brother resident in the United Kingdom who has become a British Citizen. The Appellant claimed to have a British Citizen partner. He said that he feared return to Afghanistan because of the Taliban.
3. Judge Lawrence found that the claim advanced by the Appellant deserved no weight, and that his documents were false. He found that the Appellant's brother's evidence was untrue. The judge found that the marriage relied on was one of convenience. The judge thus dismissed the appeal.
4. Permission to appeal was refused in the First-tier Tribunal but permission to appeal was granted on the renewed application. Upper Tribunal Judge Plimmer considered that the allegation of bias made against the judge was not sustained by reference to specific examples, but that the submission that the judge had not engaged sufficiently with the expert evidence produced on behalf of the Appellant, had engaged in speculation and had given inadequate reasons for dismissing the appeal were all arguable.

Submissions

5. Mr Briddock renewed his permission to appeal application as to the refused ground of perceived judicial bias at the start of the hearing. Given that the previous refusal had been for want of specific examples, the tribunal permitted further oral argument on the point. Mr Briddock identified examples within the judge's decision as consisting of repeated use of strong and condemnatory language, with repeated criticism of the conduct of the appeal by the Appellant's solicitors. An independent observer would perceive a closed mind and outright hostility to the Appellant. This was before the other problems of the general paucity of reasoning and the treatment of the expert evidence were reached.
6. Mr Tarlow for the Respondent indicated in response that the Secretary of State was not in a position to defend the decision and reasons. There was an impression of bias, for the reasons advanced by Mr Briddock. There was no alternative to the appeal's being reheard in the First-tier Tribunal before another judge.

Discussion – error of law

7. To a significant extent the decision as to whether there is a material error of law is taken out of the Upper Tribunal's hands when an onwards appeal is conceded by either party. When that concession is made by the Secretary of State, it is of particular significance, given that the tribunal's jurisdiction is one of public law and that the Secretary of State retains inherent, extra-statutory powers.

8. The tribunal must agree with Mr Briddock's submissions. The renewed ground of the impression of bias has been made good. This sadly is an appeal which has caused a hard working and very experienced judge inadvertently to create an impression of hostility which means that the Appellant's complaint that he has not had a fair hearing succeeds. It was not an easy situation. The Appellant's solicitors, in the judge's perfectly reasonable view, had not complied with directions, had provided documents piecemeal and in duplication: see, e.g., [8], [9] and [10] of the decision and reasons. Considerable and justified irritation had been caused and the overriding objective had been ignored. Experienced solicitors must expect sanctions if such conduct is repeated and that is drawn to their attention. But such unhelpful and sub-standard behaviour was hardly the responsibility of the Appellant and can never be allowed to colour a judge's evaluation of the appeal. For a judge to state in terms that an appeal should have been certified by the Secretary of State for the Home Department under section 94 of the Nationality and Asylum Act 2002 is a private opinion the judge may have formed, but that opinion expressed so strongly in the decision almost inevitably serves to reinforce the impression of hostility already created by the remarks about the Appellant's solicitors.
9. Given the finding of prejudice conceded by the Respondent, it is not necessary for the tribunal to consider the other grounds onwards appeal in any depth. It should however be said that the judge expressed himself without sufficient regard to the convention of judicial restraint, and often in polarised, unqualified terms, which tends to detract from conveying impartiality and balance. No doubt all of this was inadvertent.
10. The tribunal records these matters so that the next judge can avoid repeating such errors. Material errors of law having been conceded by the Respondent, the onwards appeal is allowed to that extent. The appeal must be reheard in the First-tier Tribunal before another judge.

DECISION

The onwards appeal is allowed

The decision and reasons is set aside because of material error of law

The appeal will be reheard in the First-tier Tribunal at Hatton Cross, not before First-tier Tribunal Judge Lawrence on the first available date

Signed

Dated 17 April 2018

Deputy Upper Tribunal Judge Manuell