



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

Appeal Number: PA/09822/2016

THE IMMIGRATION ACTS

**Heard at Manchester
On 27 February 2018**

**Decision & Reasons
Promulgated
On 1 March 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

FT

(anonymity direction made)

Respondent

Representation:

For the Appellant: Mr McVeety Senior Home Office Presenting Officer.

For the Respondent: Mr Sadiq of Adam Solicitors.

ERROR OF LAW FINDING AND REASONS

1. The Secretary of State appeals with permission against a decision of First-tier Tribunal Judge M Davies (the Judge) promulgated on the 20 June 2017, in which the Judge allowed the appellant's appeal on asylum and human rights grounds.

2. Three grounds of challenge are pleaded the first of which asserts a procedural impropriety in the way the Judge conducted the hearing expressed in the following terms:
 - 1.1 In the interests of justice, the appellant's case must be dismissed on the grounds of procedural impropriety. It is clear that at the hearing on 9 June 2017, the FTTJ did not permit the SSHD's Presenting Officer (POU) to make final submissions. At the end of the cross examination the FTTJ informed the POU that he found the witness credible and was going to allow the appeal.
 - 1.2 The POU protested because he had not been afforded the opportunity to make his submissions. He also asserted that the appellant's witness was not related and for the discrepancies raised at the hearing, wasn't credible. Whilst attempting to rely on the SSHD's refusal letter and persuade the FTTJ to follow due process, the POU was cut off at this juncture, and the FTTJ disagreed, and reluctantly reserved his appeal. The FTTJ informed the appellant that "it's just an administrative thing but I will allow the appeal."
 - 1.3 It is respectfully submitted that in cutting off the POU clearly the FTTJ had already made his mind up to allow the appeal. This seems to have been a clear lack of objectivity and no reasons were given such impetuous decision to curtail the hearing before the SSHD had an proper opportunity to conclude her submissions based on what had transpired through the cross examination.
 - 1.4 It is clear that at para 43 the FTTJ had already determined that the SSHD's cross examination would have no effect on his decision. This is procedural impropriety and does not afford the SSHD to make a case in a proper manner in accordance with the law.
3. A number of other points asserting a conflict of fact and failure to give adequate reasons and a failure to adequately assess risk on return by reference the country material are pleaded in Grounds 2 and 3.
4. Permission to appeal was granted by another judge of the First-tier Tribunal.
5. Before the Upper Tribunal relevant sections of the Judges contemporaneous typed record of proceedings were read out. These record:
 - Respondents Submissions
 - Not family member

 - Appellants Submissions
 - Need not address me
6. The record is stated to be a typed verbatim copy of what was said at the hearing. At [37] of the decision under challenge the Judge records "Mr Holt simply relied on the contents of the refusal letter. I should

take into account that the witness was not a family member of the Appellant”.

7. Mr McVeety referred to the Presenting Officers contemporaneous note of the hearing which reads:

Cross Exam

Re Exam

Immediately after IJ say he allowed.

I made submissions witness not related and there were discrepancies

IJ disagreed and cut off my submissions.

8. Mr Sadiq, who had the advantage of being one of the advocates present at the earlier hearing, was asked whether the Presenting Officers note was an accurate record of what had occurred at that stage of the proceedings which he confirmed it was.

Discussion

9. Whilst there is nothing wrong in a judge adopting a robust approach to case management to ensure all relevant issues are properly addressed and to maximise the effectiveness of proceedings, it is settled law that any party to litigation is entitled to a fair hearing. This is enshrined in Article 6 ECHR which protects the right to a fair trial.
10. Judges receive reminders as part of their judge craft training that not only must justice be done but it must be seen to be done.
11. Advocates submissions in contested proceedings form an important part of the legal process. Denying an advocate the opportunity to make submissions, especially in the face of a specific statement by that advocate that they wish to make submissions, gives rise to the question of whether the advocate concerned has been denied a fair hearing.
12. In this matter I find that the action taken by the Judge in preventing the Home Office Presenting Officer from making the detailed submissions he was seeking to make was procedurally unfair and denied the advocate the opportunity to state his case in full. There is nothing in the Judges contemporaneous notes or any other record of the proceedings that would justify such action being taken.
13. I find the Secretary State has established legal error on the basis of the denial of a fair hearing and procedural irregularity sufficient to amount to an error of law for this reason.
14. This is not a case in which the Judge indicated that submissions were not required but then allowed the appeal in the Secretary State's favour which may not have amounted to arguable legal error in the same way the Judge indicated he did not require submissions to be made from Mr Sidiq.

15. Whether such error is material depends upon whether the outcome of the decision would have been the same if such submissions had been made. The Judge clearly formed a view of the evidence and concluded at the end of re-examination that the appeal must succeed. There is nothing wrong with a judge forming a view of the merits of the case as they hear the evidence but care must be taken in expressing such a view until all the necessary procedural steps have been complied with.
16. What is not known in relation to this appeal is exactly what the Presenting Officer would have said. There are clearly, as identified in Grounds 2 and 3 of the respondent's challenge, a number of factors based upon discrepant evidence and conflict within the evidence upon which the Judge would have been required to make specific findings. The decision does not contain sufficient or adequate reasoning to enable the reader to see what the Judge's view was on these particular issues or how they have been factored into the decision-making exercise.
17. I find the error to be material.
18. I find as a result of the procedural unfairness, based on the denial of a fair hearing to the Secretary of States representative, the only option in relation to this appeal is for the decision of the Judge to be set aside. There shall be no preserved findings. The appeal shall be remitted to the Manchester Hearing Centre to be heard afresh by a judge other than Judge M Davies.

Decision

19. **The First-tier Judge materially erred in law. I set aside the decision of the original Judge. I remit the appeal to the Manchester Hearing Centre to be heard by a judge of that Tribunal other than Judge M Davies.**

Anonymity.

20. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Hanson

Dated the 27 February 2018

