



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

Appeal Number: PA/12211/2017

**THE IMMIGRATION ACTS**

**Heard Field House  
On 5 April 2018**

**Decision & Reasons Promulgated  
On 12 April 2018**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**MS  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr F Magennis, Counsel instructed by Wilson Solicitors LLP  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision dated 2 January 2018 of First-tier Tribunal Judge Bowler which dismissed the appellant's appeal against the refusal of his asylum and human rights claim, made in the context of a deportation order.
2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I continue the anonymity order made by the First-tier Tribunal. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst

others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of the protection claim.

3. The background to this matter is that the appellant is a national of Algeria who claims to have arrived illegally in 2004. He claimed asylum on the basis of a risk from his cousin and his gang whom he had reported to the authorities. This claim was refused on 9 September 2004. He appealed the refusal of an asylum claim but absconded and his appeal was dismissed in his absence, his legal representatives having withdrawn.
4. In 2010 the appellant applied for leave under the “legacy” programme but the application was refused in 2011.
5. On 9 November 2012 the appellant was convicted of conspiring to supply Class A drugs and sentenced on 16 April 2013 to 6 years imprisonment. He failed to return a questionnaire accompanying a notice dated 29 May 2013 of his liability to automatic deportation. He again failed to return a questionnaire sent to him on 10 September 2010. He was asked on 12 December 2013 whether he considered that he fell into one of the exceptions to automatic deportation but did not respond. On 19 August 2014 a deportation order was signed and then served on the appellant on 20 August 2014.
6. On 25 August 2014 the appellant provided one of the questionnaires that had been sent, maintaining that his life would be in danger in Algeria from traffickers who had brought him to the UK. On 15 September 2015 he made a human trafficking claim and was referred to the National Referral Mechanism. He received a negative reasonable grounds decision on 21 September 2015. The applicant was granted bail on 26 September 2016. He was re-detained on 30 January 2017 pending deportation.
7. On 4 May 2017, with the assistance of Thompsons Solicitors the appellant made further representations on the basis that he would be at risk of mistreatment in Algeria from traffickers to whom he owes money. Those further submissions included a witness statement dated 22 April 2017 and two videos purporting to show the traffickers looking for the appellant at his home and seriously mistreating others who had come within their control; see AA2 of the respondent’s bundle.
8. On 1 June 2017 the respondent refused leave and found that the further submissions did not amount to a fresh claim. The applicant lodged a judicial review which included a further basis for a protection claim, that he was at risk from the Algerian authorities because of his religious conversion.
9. Following judicial review proceedings, the respondent provided a further decision dated 13 November 2017 which again refused to grant leave but accepted that a fresh claim arose. That decision led to the appeal here,

the appellant lodging an appeal on 16 November 2017 with the assistance of Wilson Solicitors LLP. The appeal was listed for 14 December 2017, exactly 4 weeks after the appeal was lodged.

10. The Tribunal file shows that the respondent was directed in the notice of hearing dated 23 November 2017 to provide a bundle of all documents on which she sought to rely to the appellant no later than 5 days before the full hearing. It is not disputed that the respondent did not comply with that direction, the respondent's bundle being served only on 13 December 2018, the day before the hearing.
11. When the 5-day time limit for service of the respondent's bundle passed, the appellant's legal representatives applied for an adjournment on 11 December 2017. They applied on the basis that the respondent's bundle had not been provided so they could not take proper instructions. They had also been instructed by the appellant that he required a medical report. That application was refused on 12 December 2017 as it was found that there had been enough time to prepare the appeal and no reason given why a medical report was required.
12. On 12 December 2017 the legal representatives again applied for an adjournment as the respondent's bundle had not been received. That application was refused on 12 December 2017, the reasoning being that the appellant had delayed 13 years before making the current protection claim and that there was no evidence that the appellant had sought treatment for any mental health problems, the need for a medical report therefore being speculative.
13. On 13 December 2017 the legal representatives again sought an adjournment as the respondent's bundle had only been served that day. They submitted that:


"Proceeding with the appeal at this stage, where our client has been provided with the Respondent's documents only the day before, would effectively prevent him from responding to the case against him. This would be manifestly unfair and would result in this appeal being unjustly decided."
14. As shown at [32] to [47] of the First-tier Tribunal decision, further applications for an adjournment were made at the hearing. At [33], the First-tier Tribunal found that the appellant had all the documents that were in the respondent's bundle so could have provided these to his legal advisers and provided instructions on them such that an adjournment was not appropriate.
15. It was also argued that an adjournment should be granted as the legal advisers had not been able to see the appellant to obtain instructions and had not been able to produce a witness statement; see [34]. At [35] the First-tier Tribunal refused an adjournment on that basis as there had been time to obtain a witness statement and that one dated 22 April 2017 already existed, provided with the further submissions of 4 May 2017.

16. The application for an adjournment in order to obtain a medical report was also pursued; see [36]. The First-tier Tribunal judge considered that it was unlikely that a medical report could assist materially in an Article 8 ECHR application so refused the adjournment; see [37]. The Tribunal indicated that the appellant would nonetheless be treated as a vulnerable witness.
17. An adjournment was also sought as a bundle of country evidence had not been prepared; see [38]. The First-tier Tribunal found that the refusal letter provided sufficient information for the legal advisers to have prepared a country evidence bundle in response and also that the respondent's Country of Origin report was sufficient; see [44].
18. During the hearing, presumably because they had learned of the existence of the videos in the respondent's bundle provided the day before, the appellant's legal advisers also sought an adjournment in order to obtain the videos referred to in the further submissions of 4 May 2017. This application was refused as the First-tier Tribunal decided that the appellant could describe what was in the videos and a decision reached on whether they had probative value made.
19. I am satisfied that an error of law arose here in all the circumstances of this case. There is a reason why the Tribunal directed the respondent to provide her materials 5 days prior to the hearing. It was in order for him to have adequate time to prepare his case in response. The bundle was received only the day before the hearing and there was therefore insufficient time for preparation. The appellant did not have a fair hearing as a result.
20. That is so notwithstanding the very serious drugs offence for which he was convicted and, using as neutral a term as possible, his chequered immigration history.
21. The reasons given for refusing to adjourn include the view that it was appropriate to proceed as, in the past, the appellant had seen or been given the documents in the respondent's bundle and so could provide instructions.
22. That reasoning is not correct. At best, the appellant could only surmise what might be in the respondent's bundle. He could only know for certain if it contained only materials he already knew about after seeing the bundle which was not possible until the day of the hearing itself. Both he and his legal advisers would inevitably have remained in the dark to some extent up until the service of the bundle the day before the hearing.
23. Further, that reasoning assumes that a detained appellant either has all the relevant materials with him in detention from his immigration history or that he recalls his past dealings with the respondent in such detail that he is able to instruct his legal advisers adequately for a new appeal. Neither assumption is sustainable in my view.

24. I should add that there is no dispute here that the legal advisers tried to obtain material from the previous firm instructed by the appellant but they had not responded even up until the date of the hearing before me.
25. The case of Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) states:  
“Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FTT acted reasonably. Rather, the test to be applied is that of fairness; was there any deprivation of the affected party’s right to a fair hearing? See SH (Afghanistan) v Civ [2011] Civ 1284.”
26. My conclusion is that for the reasons set out above the appellant here did not receive a fair hearing and the decision of the First-tier Tribunal must be set aside to be re-made. Where the error of law concerns procedural fairness, it is appropriate for the appeal to be re-made in the First-tier Tribunal.
27. I should stress, however, that this decision is not in any way an indication that the appellant’s appeal cannot be heard fairly without a further witness statement, country materials, a report on trafficking or a medical report. It is merely a finding that in the particular circumstances of the hearing on 14 December 2017, in particular very late service of the respondent’s bundle, a fair hearing did not take place. The respondent’s bundle has been available since 13 December 2017, four months has passed since then and, absent any further indication from either party, there does not appear to be anything preventing the First-tier Tribunal from re-hearing the appeal at the earliest opportunity.

### **Notice of Decision**

The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be re-made in the First-tier Tribunal.

Signed 

Date 9 April 2018

Upper Tribunal Judge Pitt