



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

Appeal Number: AA/07626/2013

THE IMMIGRATION ACTS

**Heard at Glasgow
On 27 January 2015**

**Determination issued
On 28 January 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

GOOTIAR ABDULLAH MAHMOODI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms N Weir, of Latta & Co., Solicitors

For the Respondent: Mrs S Saddiq, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a determination by First-tier Tribunal Judge David C Clapham SSC, promulgated on 27 August 2014, dismissing his appeal against refusal of asylum.
2. The appellant's first firm of solicitors withdrew from acting by letter dated 23 March 2014. They had earlier lodged a neuropsychologist's report which recommended a psychiatric evaluation. A second firm of solicitors was instructed. They wrote to the First-tier Tribunal on 10 July 2014 saying that the appellant had been admitted to hospital after being attacked and stabbed, but they hoped to obtain instructions prior to the hearing. On 21 July 2014 the second firm withdrew from acting. The hearing took place on 14 August 2014. The appellant was neither present nor represented. The Judge decided to proceed, observing that if he

postponed the case another Judge was likely to be faced with an identical position.

3. On 19 August 2014 the appellant's present solicitors wrote to the First-tier Tribunal saying that he had not attended, that he did not know whether his previous agents did, and asking what happened. The letter does not say why the appellant did not attend.
4. In his grounds of appeal to the Upper Tribunal the appellant contends that the Judge ought to have adjourned because "... there was good reason for the absence of the appellant and this had been communicated to the Tribunal".
5. On 19 September 2014 First-tier Tribunal Judge Garratt granted permission to appeal to the Upper Tribunal was granted. He observed from the file that the notice of hearing sent to the appellant at his last recorded address had been returned in the post and thought the Judge was arguably wrong not to adjourn for re-service with notice of the consequences of non-attendance. I cannot now see the return of that notice on file, but the point seems rather misleading. The letter of 19 August 2014 shows that the appellant knew of the hearing. There was a history of prior adjournments. Various notices issued to him all stated in the usual way that the case might be decided in his absence if he did not attend.
6. In a rule 24 response to the grant of permission the respondent maintains that given the lack of evidence of the claimed attack and hospitalisation, the lack of instructed representatives, and failure to attend or communicate with the Tribunal it was open to the Judge to find that there would be no useful purpose in an adjournment.
7. Ms Weir submitted thus. She accepted that there was before the Judge very little information about any hospitalisation of the appellant due to any incident before 10 July 2014, and that her firm's letter of 19 August 2014 contained no explanation of non-attendance. She said that the appellant had instructed her firm only shortly before then. He had difficulties in providing even basic information. He did not appear to know the date of the incident leading to hospitalisation in July or how long he spent in hospital. However, he was present on 27 January 2015. He now seemed to understand the importance of co-operating to have his case heard. Efforts had been made to obtain the medical history but were complicated by the appellant no longer being registered with his previous GP. His new GP had confirmed that from 10 - 17 December 2015 the appellant was in hospital over mental health issues. These problems appear to have got worse since July 2014. A medical report has been obtained which confirms he is fit to give evidence. A statement has been obtained from him, although with some difficulty. If his case were to be reheard, an application was likely to be made to include mental health issues among his grounds, not under Article 3 but under Article 8. The case should be remitted to the First-tier Tribunal for an entirely fresh hearing.

8. Mrs Saddiq said that it was not surprising that the First-tier Tribunal elected to proceed under all the circumstances then known, but she put up no strong opposition to the appellant having one further opportunity to run his case, in the interests of fairness.
9. I indicated that there would be a rehearing.
10. Error of law by not adjourning arises in two main ways. A Judge may fail to recognise that fairness calls for an adjournment on the information before the Tribunal. On other occasions, procedure goes astray for some reason unknown to the Judge e.g. a last minute mishap which prevents both attendance and prompt communication with the Tribunal.
11. I do not think there was any error of the first type. There was no reason for the Judge to think the appellant deserved an adjournment or that his case might be significantly better even if one were granted.
12. It is a marginal issue whether this case discloses an error of the second type, which can be categorised as inadvertent procedural unfairness. It remains unexplained why the appellant did not turn up at the hearing. He has not done much to help his case. There may be underlying reasons, but there is a limit beyond which procedure cannot be stretched. On the other hand, there is some indication that matters may have gone wrong (through no fault of the First-tier Tribunal) and that the case may be better if he is given the opportunity to put that right. There is just enough to justify giving him a further chance.
13. The determination of the First-tier Tribunal is **set aside**. No findings are to stand. Under s.12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to **remit the case to the First-tier Tribunal**. The member or members of the First-tier Tribunal chosen to reconsider the case are not to include Judge D C Clapham.
14. No anonymity direction has been requested or made.



27 January 2015
Upper Tribunal Judge Macleman