



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

Appeal Number: AA/08800/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 15 July 2015**

**Decision & Reasons Promulgated
On 16 July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**NABIL MOHAMMED MOHAMMED SNIDAN
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representative

For the Respondent: Mrs Pettersen a Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The respondent notified the appellant of her decision to remove him (10 October 2014) following the refusal of his claim for asylum or ancillary protection. His appeal against that decision was dismissed by First Tier Tribunal Judge Kempton following a hearing on 2 December 2014. This is an appeal against that decision.
2. No one had attended for the appellant by the time the case was called on to be heard at 3.10. There was no request for the matter to be

adjourned. I was satisfied I should proceed to hear the appeal in the absence of the appellant or anyone for him in accordance with The Tribunal Procedure (Upper Tribunal) Rules 2008 Rule 38. That is because the appellant and his representative had been given notice of the date time and place of the hearing, there was no good reason not to proceed, and the appeal could be justly determined given the issue.

3. First-Tier Tribunal Judge Kamara granted permission to appeal (6 February 2015). She stated that

“It is arguable that the failure of the judge to adjourn the appeal when it is said that the appellant lacked capacity to represent himself owing to mental illness amounted to procedural unfairness.”

4. The grounds in the application are that the judge failed to give sufficient regard to the appellant’s mental health and capacity to deal with the proceedings. In particular he was unrepresented, could not remember the screening interview, had bizarre reasoning for his detention, had been detained due to his mental health in France and Barnsley (that being in June 2014), had self harmed in Saudi Arabia, and since the adverse determination has attempted to commit suicide.
5. The respondent asserted (19 February 2015) in essence that the Judge
 - (1) carefully reviewed the evidence,
 - (2) was aware of the medical evidence and hospitalisations,
 - (3) gave adequate reasons for finding that the appellant understood the hearing procedure and was competent to appear unrepresented, and
 - (4) gave good reasons for disbelieving the account.

Discussion

6. I bear in mind [Nwaigwe \(adjournment: fairness\) \[2014\] UKUT 00418 \(IAC\)](#) which guides me to the view that 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 First-tier Tribunal 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.
7. The Judge considered adjourning the hearing [paragraph 30] on another ground. She declined to do so and gave reasons. She did not indicate that she considered adjourning due to any concern about his mental health.
8. It is plain the Judge was aware of his past problems as she refers to them repeatedly [paragraph 5, 17, 29, 33, and 37]. She accurately

summarised the medical evidence [paragraph 38] which indicates he suffered from depression (7 November 2014) there being no suggestion in that letter or any other document that he may have problems in fully participating in the proceedings. Indeed the Judges own observations of his manner at the hearing bore that out [paragraph 39]. In those circumstances I am not satisfied that there was any deprivation of the appellant's right to a fair hearing.

9. In my judgement there was therefore no material error of law in the manner in which the Judge dealt with the hearing.

Decision:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Signed:

Deputy Upper Tribunal Judge Saffer
16 July 2015