



IAC-AH-LEM/DP-V2

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

Appeal Number: AA/10564/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28th August 2015**

**Decision & Reasons Promulgated
On 21st September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**AA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Tabori, Counsel

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Eritrea born on 1st December 1995 (albeit that that date of birth is disputed by the Secretary of State). It is however accepted by the Secretary of State that the Appellant is a minor. The Appellant applied for asylum on the basis that she had a well-founded fear of persecution in Eritrea due to her religion being that of a Pentecostal Christian and also because she left illegally. The Appellant originally left Eritrea on 19th January 2011 travelling to the Sudan and she left Sudan on 22nd March 2014 travelling to France. She arrived in the UK by lorry on 25th March 2014 which was the same day upon which she claimed asylum.

2. The Appellant appealed the Notice of Refusal of the Secretary of State and her appeal came before Judge of the First-tier Tribunal Kelly sitting at Hatton Cross on 8th April 2015. It is relevant to note that at that hearing the Appellant was represented by Counsel but did not personally attend and that no reason was given to the Tribunal for her non-attendance. The Appellant's appeal was subsequently dismissed on asylum and human rights grounds and the Appellant was found not to be in need of humanitarian protection. An anonymity direction was however made.
3. Grounds of Appeal were lodged to the Upper Tribunal on 28th April 2014. Those grounds contended that the Appellant was unable to attend the hearing due to a sudden illness and that supporting hospital medical documentation setting out the detail of the illness and a witness statement by the Appellant as to the events which led up to her non-attendance were lodged with the grounds for permission to appeal. Further grounds were submitted in relation to the Appellant's date of birth and credibility.
4. On 11th May 2015 First-tier Tribunal Judge Grant-Hutchison granted permission to appeal concluding that there was an arguable error of law that had the Appellant been able to attend the evidence may have made a material difference to the outcome or to the fairness of the proceedings.
5. On 18th May 2015 the Secretary of State responded to the Grounds of Appeal under Rule 24. It is pertinent to note paragraph 3 of the Rule 24 response which states:

“The Respondent does not have the medical documentation referred to in the application for permission. If the documentation supports the Appellant's contention that she was unable to attend through ill-health the Respondent is inclined to the view that refusal of that application for an adjournment is a material error of law.”
6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by her instructed Counsel Mr Tabori. The Secretary of State appears by her Home Office Presenting Officer Mr Avery.
7. It is important to note the concession made by the Secretary of State in the Rule 24 response to the effect that if medical evidence is produced that the Appellant was unable to attend the hearing before the First-tier Tribunal that it may be conceded by the Secretary of State that there is a material error of law.
8. I am taken by Mr Tabori to paragraph 18 of the Grounds of Appeal. Those Grounds of Appeal submit that there is medical evidence confirming the Appellant attended the Emergency Department at 20:53 on 8th April with a 24 hour history of diarrhoea and vomiting and that the Appellant was diagnosed as suffering from “gastro-intestinal – diarrhoea and gastroenteritis of presumed infections origin.” He submits that that diagnosis explains why the Appellant was unable to travel from Plymouth to London on 8th April in order to attend the hearing and that her failure to

inform her solicitors on the day of the reasons for her absence must be viewed in the light of the severity of the symptoms she describes, the lack of charge on her mobile phone battery and, significantly, her age.

9. In addition I am provided with copies of the confirmatory evidence from the hospital that the Appellant did attend in the above-mentioned circumstances.

The Law

10. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

12. There has been a plethora of case law regarding issue of fairness and failure of the First-tier Tribunal to grant an adjournment in the absence of an Appellant. Generally speaking those authorities are strict in their interpretation of the law and emphasise that adjournments can only be with good reason and that every attempt must be made by all parties attending before the Tribunal to avoid circumstances arising when an adjournment request is made.
13. To that extent it is difficult to criticise the approach adopted by the First-tier Tribunal Judge. After all Judge Kelly was merely aware of the fact that the Appellant had a poor attendance history and no explanation was given to him as to why she had not attended. However subsequent circumstances show quite clearly that the Appellant was ill and had been receiving hospital treatment. Further I take into account the Appellant's age although she is not a minor. However the principal issue is that the Appellant was unable to give testimony in support of her claim and in such

circumstances I find that there was a material unfairness to the Appellant. The correct approach, and this is agreed by both legal representatives, is to note evidence produced from the Emergency Department at Plymouth NHS Trust subsequently sent on to the Appellant's GP Dr J Pickard and to remit the matter back to the First-tier Tribunal to be re-heard on the first available date with none of the findings of fact stand.

14. There is one further issue that I wish to address within this determination. It is an administrative issue but an important one. The Appellant attends before the Tribunal. She has travelled all the way from Plymouth. She has clearly attended having been advised to do so by her instructed solicitors Blavo & Co. However the Appellant advises that she lives in Plymouth and that she does not live at the address set out in the notice of hearing of [-] Thurlow Street SE17 2UW. She believes that to be the contact details of an interpreter that she was referred to. The Appellant clearly does not speak any English and is having difficulty in providing the Tribunal with a correct address. I therefore direct as a preliminary issue that the Appellant's instructed solicitors do notify the Tribunal of the Appellant's correct address within seven days of today's date. It would be useful if they are able to provide a full and proper explanation as to why the address was previously recited as being to the Tribunal as the address in Thurlow Street, SE17.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and is set aside. The matter is remitted back to the First-tier Tribunal to be re-heard and the following directions are given:

- None of the findings of fact of the First-tier Tribunal are to stand.
- The matter is to be re-heard on the first available date 28 days hence at Hatton Cross before any First-tier Tribunal Judge other than Immigration Judge Kelly, with an ELH of three hours.
- That there be leave to either party to file and serve an up-to-date bundle of evidence upon which they intend to rely at least seven days pre-hearing.
- An Amharic interpreter is required.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge D N Harris