



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/02246/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 8<sup>th</sup> December 2017

Determination Promulgated  
On 11<sup>th</sup> December 2017

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**[F Y]**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Hussain, Trent Chambers

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. Permission to appeal was sought and granted on the basis that it was arguable the First-tier Tribunal judge fell into arguable procedural error, in essence, in failing to grant an adjournment on her own motion because the First-tier Tribunal judge made no attempt at the hearing to establish why the appellant was not legally represented and whether he needed an adjournment to secure representation and whether he had the respondent's bundle. Mr Hussain only had a copy of the decision the subject of appeal and the First-tier Tribunal appeal decision. I gave him the copy court bundle and put the case back for him to consider the documents.
2. The appellant was diagnosed, in Pakistan, as suffering from paranoid schizophrenia. The First-tier Tribunal judge set out the appellant's family history

and the appellant's own medical history, detailed the medication he is on and the support he receives in the UK both from the Mental Health Team in Hillingdon and from his brother. She referred to the appellant's studies and recorded that he attended unrepresented but with his brother. She describes a letter in support written by the brother as a witness statement and this is one of the matters that Mr Hussain submitted was indicative of a failure on the part of the judge which would not have occurred had the appellant been legally represented.

3. Further alleged failings were:

- (i) The judge did not identify whether the appellant had seen the respondent's bundle when, according to the brother's witness statement, he had not;
- (ii) The judge did not identify whether the appellant had filed a bundle of documents;
- (iii) The judge made no enquiry whether the appellant had sought legal advice, why he had not if he hadn't or why he had not obtained it if he had;
- (iv) The judge failed to take account of the appellant's suicide attempt when considering whether he was vulnerable;
- (v) The judge failed to have adequate regard to the appellant being a vulnerable witness and excluded the appellant's brother whilst the appellant was giving evidence, which she should not have done;
- (vi) That despite the impression given in the decision, the appellant was not assisted by the judge in giving evidence.

4. In support of the appeal before me the brother had filed a witness statement. In that statement, he says ([4]) that he had not filed a witness statement to the First-tier Tribunal, yet later in that witness statement he refers to a witness statement filed by him. What he actually filed was a document headed Letter of Support. The record of evidence made by the First-tier Tribunal judge refers to the brother stating that he had a prepared statement and there were things he wanted to say. The document in question is headed "Letter of Support" and concludes by describing him as a 'deponent' and that 'what ever stated above is true to the best of my knowledge and belief'. Although not a witness statement in the sense understood by solicitors and barristers, it is plain that it set out matters he wished the judge to take into account and which he amplified during his oral evidence.

5. It is correct that the judge has not recorded whether the appellant had the respondent's bundle. Mr Hussain did not have a copy of the respondent's bundle – it is unclear why Trent Chambers had not requested a copy of the bundle given they had apparently been representing (or at least involved with) the appellant since at least 8<sup>th</sup> August 2017. The respondent's bundle included previous decisions taken by the respondent, various medical documents, the application form and the decision the subject of appeal. All of those documents would have been available to the appellant or his brother (given his brother is assisting the appellant and they live in the same household) or would have been known to the appellant and his brother. In any event the judge, where she refers to them, accepts their veracity and places weight upon them. None of the

documents are challenged by the respondent and none are taken as adverse to the appellant's account.

6. Although the judge did not state in terms that the appellant had filed a bundle of documents, she referred in her decision to documents relied upon by the appellant. There is no submission by Mr Hussain that the judge overlooked a document or failed to place adequate weight upon particular documents.
7. It appears from the papers that solicitors had charged £2,500 for work done up to the point of the refusal and thereafter required a payment of £800 in order to continue to act. Those letters can only have come into the possession of the Tribunal if they had been provided by the appellant. The appeal form stated that the appellant did not have a disability requiring special arrangements. The brother's witness statement provided with the application seeking permission to appeal states ([4]) that despite his efforts to find a solicitor, he could not find one on legal aid and he had no funds and therefore he was a litigant in person. It is correct that the judge has not recorded asking about legal representation, but it is apparent from the papers that the applicant had previously had legal advice and had been asked for a very large sum of money for legal advice to continue. The judge records there was no request for an adjournment to obtain legal representation. The brother's witness statement provided for the permission application makes plain he has been unable to find legal representation even though it does not set out the attempts actually made. It is clear that, even if the judge had asked about legal representation, none was available; no reason is given now and no indication of what attempts had been made to find legal representation. On that basis, the hearing before the First-tier Tribunal judge would, in any event, have proceeded.
8. The judge records the evidence about the suicide attempt. She records the brother's evidence about the suicide attempt and refers to a lack of clarity as to how long the appellant was in hospital as an informal patient or whether he was sectioned. The judge accepts there was a suicide attempt and notes that no medical reason for this was advanced. I see from the medical records at that time that the appellant had legal advisors – MTG solicitors to whom the decision letter of 5<sup>th</sup> January 2016 was sent.
9. The judge, according to the brother's witness statement excluded him from the hearing whilst the appellant gave evidence. That is not apparent from the decision of the First-tier Tribunal or the Record of Proceedings but I have treated the brother's assertion to that effect as correct. The appellant, despite having said he was not, is plainly a vulnerable witness. That it was incorrect for the brother to be excluded does not necessarily follow; much depends on the appellant's state of health at that time and his ability to cope with the proceedings. There is nothing to suggest that he had difficulties giving evidence. The judge refers in her determination to the ability of the appellant to study: he had entered the UK as a student on 6<sup>th</sup> January 2010 and his leave extended until 30 September 2014 albeit it was curtailed subsequently to 14<sup>th</sup> February 2014; and that the medical evidence is that his symptoms are generally controlled albeit he needs assistance in terms of appointments and taking medication in addition to some input from community health services.

There is limited evidence of the appellant having any kind of relapse or anxiety or additional difficulties after the hearing; the brother said he was tearful after the hearing but no medical evidence of any significant after effects was provided. In any event, there is nothing in the grounds to indicate that the evidence would have been any different. The judge accepts the appellant's evidence and the documentary evidence. The brother in his witness statement is disagreeing with the judge's finding that there is contact with the family in Pakistan. Although the submission by Mr Hussain is that had the appellant been able to give evidence with support as a vulnerable witness, that finding may have been different is not sustainable. In reaching that finding the judge considers not only the appellant's evidence but also the brother's evidence that he provides financial support for his family in Pakistan and that the brother visits Pakistan.

10. Although the brother's witness statement asserts that he does not believe that the appellant's evidence was coherent, there is no indication how the evidence given could have been different. I asked Mr Hussain if he wished to amend his grounds of appeal to include a challenge on the basis that other evidence was available which, had the appellant been treated as a vulnerable witness, would have been put before the First-tier Tribunal but he had no instructions.
11. A judge must take particular care when an appellant or witness is vulnerable and must comply with the guidance given by the Immigration and Asylum Chamber – see *AM (Afghanistan)* [2017] EWCA Civ 1123; there are elements to the hearing where the First-tier Tribunal judge may have fallen short. But the fact is that the judge accepted all the evidence save for the brother's evidence that the appellant had no-one to return to in Pakistan who would be able to provide an appropriate level of care. The judge did not accept that, on the basis of the evidence before her, for reasons that were open to her. They were not perverse or irrational.
12. The judge considered relevant jurisprudence and reached findings on the evidence which were open to her. The judge was clear in her findings as to the availability of medical and familial support in Pakistan. She approached the issue of proportionality on the basis of the evidence at its highest save for the finding from the brother's evidence. There is no material error of law and I dismiss the appeal.

#### Conclusions:

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; the decision of the First-tier Tribunal stands.

Date 8<sup>th</sup> December 2017



Upper Tribunal Judge Coker