



ST
Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/23933/2015

THE IMMIGRATION ACTS

Heard at Field House
On 4 July 2017

Decision & Reasons Promulgated
On 11 July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

MR ASIM RAFIQUE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representative
For the Respondent: Mr Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. This matter comes before me for consideration as to whether or not there is a material error of law in the determination of First-tier Tribunal Judge Randall (“the FTTJ”) promulgated on 15 November 2016, in which the FTTJ dismissed the appellant’s appeal against the refusal of a residence card as confirmation of a right to reside in the United Kingdom pursuant to the Immigration (European Economic Area) Regulations 2006.
2. No anonymity direction was made by the FTTJ and none is required at this stage.
3. The appellant’s application was refused on 11 June 2015. His appeal was heard on 20

October 2016. Neither the appellant nor the respondent was represented at the hearing. The FTTJ noted that a notice of hearing had been sent to the appellant and considered it was in the interests of justice to proceed with the hearing. He did so and dismissed the appeal on the grounds that the appellant had not demonstrated the sponsor, the appellant's purported wife, was in the UK or exercising Treaty rights here.

4. The appellant was granted permission to appeal because it was not clear why the FTTJ had not considered the medical evidence as a possible explanation for the appellant's absence.
5. At the outset of the hearing before me, I indicated to the appellant and Mr Bramble, who appeared for the respondent, that the FTTJ had mistakenly referred to medical evidence submitted by the appellant shortly before the hearing as having been sent to the First-tier Tribunal with the notice of appeal (his paragraph 5).
6. Mr Bramble accepted that the FTTJ had failed to take into account the medical evidence submitted by the appellant prior to the hearing in considering whether it was in the interests of justice to proceed in the absence of the appellant. He conceded the appellant deserved the opportunity to present his case in court and that the matter should be remitted to the First-tier Tribunal for a fresh hearing.
7. The power to proceed with the hearing in the absence of the appellant is contained in Rule 28 of the *Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014* ("the Rules"). This requires the Tribunal to consider whether it is in the interests of justice to proceed with the hearing. The FTTJ had the power to adjourn the hearing of his own motion under Rule 4(3)(h). The overriding objective in Rule 2 required the Tribunal to deal with the case fairly and justly when exercising any power under the Rules.
8. It is clear from the FTTJ's decision that he had failed to take into account, in considering whether to proceed with the hearing in the absence of the appellant, the content of the medical evidence submitted by the appellant prior to the hearing (albeit without a formal request for an adjournment). The FTTJ knew the appellant was not legally represented and should have considered whether it was in the interests of justice for the hearing to proceed in the absence of the appellant in the light of the contemporaneous medical evidence before him. This evidence was sufficient to demonstrate a good reason for adjournment of the hearing: it was from the appellant's treating hospital and indicated that the appellant was unwell as a result of an accident.
9. I am satisfied that the FTTJ's decision to proceed in the absence of the appellant was flawed: it was procedurally unfair and must be set aside. I note that the appellant's circumstances have changed since the hearing before the FTTJ. Evidence of his changed circumstances is required. It is appropriate therefore for the matter to be remitted to the First-tier Tribunal for a fresh hearing. It may be that the outcome of the hearing will be no different but the appellant is entitled to a fair hearing. In passing I observe that the appellant pursues an Article 8 claim but this is precluded following the Court of Appeal judgment in **Amirteymour v Secretary of State for the Home Department [2017] EWCA Civ 353**.

Decision

10. The making of the decision of the First-tier Tribunal involved the making of an error on a point of procedure.

11. I set aside the decision.
12. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunal Courts and Enforcement Act 2007 and Practice Statement 7.2(v), before any judge aside from FTTJ Randall.

A M Black

Deputy Upper Tribunal Judge

Dated 10 July 2017