



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

Appeal Number: PA/03028/2017

THE IMMIGRATION ACTS

Heard at Birmingham

On 20 September 2017

**Decision & Reasons
Promulgated
On 22 September 2017**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**LE CUONG VIET
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Daykin, instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Le Cuong Viet, was born on 1 February 1996 and is a male citizen of Vietnam. He appealed against a decision of the respondent dated 10 March 2017 to refuse his asylum claim and to give directions for his removal. The First-tier Tribunal (Judge Chana) in a decision

promulgated on 1 June 2017 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Before Judge Chana, Miss Daykin (who also appears before the Upper Tribunal) made an application on the appellant's behalf for an adjournment of the hearing. Judge Chana refused that application giving her reasons at [28]. When considering whether or not to grant an adjournment of the hearing, Judge Chana unfortunately applied the old Procedure Rules (The Tribunal (Procedure) (First-tier Tribunal) Rules 2005) rather than the current Rules (Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014). The reason for the application for the adjournment was that medical evidence needed to be obtained from the Helen Bamber Foundation. Applying the "old" Procedure Rules, in particular Rule 21(2), Judge Chana noted this provided "that the Tribunal must not adjourn a hearing of an appeal on the application of the party unless satisfied that the appeal cannot otherwise be justly determined". The correct (new) provision appears in the 2014 Procedure Rules at paragraphs 2 and 4:

'Overriding objective and parties' obligation to co-operate with the Tribunal

2.—(1) The overriding objective of these Rules **is to enable the Tribunal to deal with cases fairly and justly. [my emphasis]**

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the

complexity of the issues, the anticipated costs and the resources of the parties and of the

Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the

proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) **avoiding delay, so far as compatible with proper consideration of the issues. [my emphasis]**

(3) The Tribunal must seek to give effect to the overriding objective when it —

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must—

- (a) help the Tribunal to further the overriding objective; and
- (b) co-operate with the Tribunal generally.

Case management powers

4.—(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.

(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any

time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may—

(a) extend or shorten the time for complying with any rule, practice direction or direction;

(b) consolidate or hear together two or more sets of proceedings or parts of proceedings

raising common issues;

(c) permit or require a party to amend a document;

(d) permit or require a party or another person to provide documents, information, evidence

or submissions to the Tribunal or a party;

(e) provide for a particular matter to be dealt with as a preliminary issue;

(f) hold a hearing to consider any matter, including a case management issue;

(g) decide the form of any hearing;

(h) **adjourn or postpone a hearing; [my emphasis]**

(i) require a party to produce a bundle for a hearing;

(j) stay (or, in Scotland, sist) proceedings;

(k) transfer proceedings to another court or tribunal if that other court or tribunal has

jurisdiction in relation to the proceedings and—

(i) because of a change of circumstances since the proceedings were started, the

Tribunal no longer has jurisdiction in relation to the proceedings; or

(ii) the Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case; or

(l) suspend the effect of its own decision pending the determination by the Tribunal or the Upper Tribunal of an application for permission to appeal against, and any appeal or review of, that decision.'

3. Mr Mills, for the Secretary of State, accepted that the judge had fallen into material error. He submitted that the 2014 Rules differed substantively from the 2005 Rules upon which Judge Chana had incorrectly relied. The overriding objective provides that a case should be dealt with "fairly and justly" and there is no longer a mandatory obligation on the Tribunal to proceed with a hearing unless it can otherwise not be justly determined. Further, the overriding objective at 2(1)(e) provides that the avoiding of delay (in this case by way of an adjournment) should be "compatible with proper consideration of the issues". Both advocates agreed that the question of the appellant's medical condition had been raised before the hearing before Judge Chana. The Helen Bamber Foundation (HBF) had been approached and had given estimates for the likely date of the production of a report. Miss Daykin submitted that given that the decision in the case had been taken in March 2017 and there had been a First-tier Tribunal hearing in April 2017 a delay of a couple of months beyond that date was not excessive. A Rule 35 report had already been obtained and revealed scarring on the appellant's body. The HBF report had been commissioned whilst the appellant had been in detention. Judge Chana had dealt with the Rule 35 report at [67] but both advocates agreed that this evidence of the appellant's medical condition and scarring was inadequate. Further, both representatives referred me to [48] at which the judge recorded that "this [inconsistent answers given to questions by the appellant] ... cannot be explained away by his mental health and ability to recall". As Miss Daykin submitted, the judge here attempts her own assessment of the appellant's mental health but does so without any relevant expert evidence to guide her.
4. I am aware that at [28] the judge does remark that the appeal needed to be "fairly determined" but there is no doubt that she applied the wrong procedure rule test when deciding whether to adjourn the hearing; I am not satisfied that this is an instance when the judge may have had in mind the relevant procedure rule but has accidentally referred to the former provision. In any event, given that the appellant's medical and psychological condition had been raised before the hearing in the First-tier Tribunal and given also that the likely completion dates for a report were available to the judge and in light of the fact also that the delay from the respondent's decision to the likely completion of the medical evidence was

not by any standard excessive, it seems to me that the judge, by refusing the adjournment application, has failed to put the Tribunal in a position where it might be able to carry out a “proper consideration of the issues.” Indeed, in my view, her decision on that issue was legally flawed under both the 2005 and 2014 Procedure Rules.

5. I set aside Judge Chana’s decision. None of the findings of fact shall stand. Fresh evidence has been produced including the report from the Helen Bamber Foundation. This evidence is now on the Tribunal file and I note that it has been served on the Secretary of State. There will need to be a fresh hearing in the First-tier Tribunal which will then remake the decision. Any evidence upon which either party may seek to rely at the next hearing should be filed at the Tribunal and served on the other party no later than ten clear days before the hearing.

Notice of Decision

6. The decision of the First-tier Tribunal promulgated on 1 June 2017 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge Chana) for that Tribunal to remake the decision.

No anonymity direction is made.

Signed

Date 21 September 2017

Upper Tribunal Judge Clive Lane

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

Signed

Date 21 September 2017

Upper Tribunal Judge Clive Lane