



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

Appeal Number: PA/05054/2016

THE IMMIGRATION ACTS

**Heard at Stoke Bennett House
On 31 July 2017**

**Decision and Reasons Promulgated
On 08 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

EBRAHIM IRANNEJAD

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Vokes counsel instructed by French & Company
For the Respondent: Mrs Obomi Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Appellant was born on 10 July 1976 and is a national of Iran.
3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Frankish promulgated on 28 March 2017 which dismissed the Appellant's appeal against the decision of the Respondent dated 5 May 2016 to refuse his protection claim.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Frankish ("the Judge") dismissed the appeal against the Respondent's decision under the Immigration Rules.
6. Grounds of appeal were lodged arguing: that the Judge was wrong to :
 - (a) There was procedural unfairness in the Judge's refusal to adjourn the case and the Judge took into account a number of irrelevant factors in refusing the application.
 - (b) The Judge gave inadequate reasons for reaching his adverse credibility findings.
 - (c) The Judge makes adverse findings on the Appellants evidence and then rejected the experts evidence on that basis.
7. On 26 April 2017 First-tier Tribunal Judge Nightingale gave permission to appeal on all grounds.
8. At the hearing I heard submissions from Mr Vokes on behalf of the Appellant that:
 - (a) Given the history of the case and the previous challenge to the use of an Iraqi Kurdish interpreter the Judges approach to the application to adjourn when an Iraqi interpreter was provided was in error.
 - (b) The Appellant had indicated in his rebuttal statement the issues that he had with the Iraqi interpreter in his substantive interview.
 - (c) At the CMR the Appellants representatives had again indicated that he preferred an Iranian Kurdish interpreter but in the absence of that he required a Farsi interpreter. The court administration appeared to have been aware that there was no Iranian Kurdish interpreter available at Stoke but this was not communicated to the representative.

- (d) The expert witness Sheri Laizer had been asked to comment on the issue of the difference in the dialect between Iraqi and Iranian Kurdish speakers and the Judges reasons for rejecting this were inadequate.
- (e) It was not the interpreter who had to be satisfied that he could interpret but the Appellant who had to be satisfied he was understood.

9. On behalf of the Respondent Mrs Obomi submitted that :

- (a) She relied on the Rule 24 notice.
- (b) The Judge had fully considered the adjournment request before refusing it.
- (c) The Judge was satisfied that while the interpreter was an Iraqi he had previously interpreted for Iranians in the past without any difficulty and it would have been obvious if there were problems.

10. In reply Mr Vokes on behalf of the Appellant submitted :

- (a) The Judges views on the interpretation issue impacted on his assessment of the expert witness and tainted all of his findings.
- (b) The test is one of fairness not reasonableness.

The Law

- 11. Rule 4(3) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 gives the power to adjourn or postpone a hearing. This power must be exercised in accordance with the overriding objective and having regard to any other relevant considerations. The decision of the Upper Tribunal in Nwaigwe (adjournment; fairness) [2014] UKUT 00418 (IAC) emphasizes the importance of the test of fairness and the question of whether a party will be deprived of a fair hearing if an adjournment is refused.
- 12. Each application to adjourn must be considered on its own merits, examining all the factors brought to the Tribunal's attention. When reaching a decision on such an application, the Tribunal may also have regard to information already held and its own special expertise (see rule 2(2)(d)).

13. Factors weighing in favour of adjourning an appeal, even at a late stage in proceedings, include.

(a) Sudden illness or other compelling reason preventing a party or a witness attending a hearing. Normally such a reason should be supported by medical or other relevant evidence, unless there has been insufficient time to obtain such evidence. However, where there is no likelihood that the party will be able to attend a hearing within a reasonable period, a hearing may proceed in absence where the tribunal considers that this is in the interests of justice in terms of rule 28.

(b) Late changes to the grounds of appeal or the reasons for refusal which change the nature of the case. The terms of rules 19(7), 23(2)(b) and 24(2) should be taken into account, as appropriate, when considering changes to the grounds or reasons.

(c) Where further time is needed because of a delay in obtaining evidence which is outside the party's control, for example, where an expert witness fails to provide a report within the period expected.

14. The following factors, where relevant, may weigh against the granting of an adjournment.

(a) The application to adjourn is not made at the earliest opportunity.

(b) The application is speculative, such as, for example, a request for time for lodging further evidence where there is no reasonable basis to presume that such evidence exists or could be produced within a reasonable period.

(c) The application does not show that anything material would be achieved by the delay, for example, where an appellant wants more time to instruct a legal representative but there is no evidence that funds or legal aid is available.

(d) The application does not explain how the reason for seeking an adjournment is material to the case, for example, where there is a desire to seek further evidence but this evidence does not appear to be material to the issues to be decided.

(e) The application seeks more time to prepare the appeal when adequate time has already been given. In such circumstances, the Tribunal may take into

consideration a failure to comply with directions. However, a failure to comply with directions will not be sufficient of itself to refuse an adjournment.

Finding on Material Error

15. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law.
16. At the start of the hearing, the Appellants representative applied for an adjournment. The history of this case that was before the Judge was that the Appellant had encountered dialect difficulties with an Iraqi Kurdish interpreter being provided at his substantive interview which led to a statement dated 26.4.2016 in which he identified interpretation problems and the fact that he had difficulties with Iraqi dialect and if an Iranian Kurdish speaker was not available a Farsi speaker was preferable. His solicitors in a letter dated 8 April 2016 confirmed this problem and indeed asserted that they had extended his legal aid in order to ensure that they could secure the services of an Iranian Kurdish interpreter. At the CMR on 7 September 2016 the Judge noted and underlined the requirement for an Iranian Kurdish interpreter.
17. The interpreter provided on the date of the hearing was an Iraqi Kurdish speaker.
18. In setting out his reasons for refusing the adjournment the Judge makes no reference to either the Procedure Rules or the caselaw that govern such applications. If it was clear that those principles were applied this would not amount to an error of law but I am satisfied that the Judge had failed to demonstrate that he addressed the issue of 'fairness' at all.
19. I find that a number of irrelevant factors were taken into account by the Judge in determining that the court interpreter was acceptable even though the Appellant was clear through his advocate that he had no confidence in the Iraqi interpreter. The Judge asserts that he satisfied himself that no communication problems were apparent between the Appellant and the interpreter but given that the Judge cannot speak Kurdish, and the Appellants English is extremely limited and therefore he could not in court indicate whether what he said was being properly interpreted I find this reasons to be inadequately reasoned. He notes that the interpreter is 'well known and respected' but does not make clear why this is relevant to the issue of whether the Appellant who was a speaker of Iranian

Kurdish rather than the interpreters Iraqi Kurdish could understand and be understood.

20. It appears from paragraph 7 of the Judge's decision that the court, if not the judge, was aware prior to the hearing date that '*Bennett House does not have access to any Kurdish Sorani speakers who are specifically recorded as being of Iranian origin.*' Given the history of the case and the very clear and reasoned application for an Iranian Kurdish speaker I find that it was procedurally unfair not to give the Appellants representatives an opportunity prior to the date of hearing comment on this and if necessary confirm that they preferred, as they had previously stated, a Farsi speaker. I am satisfied that rather than giving this as a reason for refusing the adjournment the Judge should have considered whether it was a reasons to adjourn the case. The failure to communicate this information prior to the date of hearing deprived the Appellant of the opportunity to make a timely application to adjourn if necessary.
21. The Judge also noted that if the Appellant or the advocate brought to his attention any problems of interpretation he would consider a fresh hearing and he detected no such problems and none were drawn to his attention. As I have indicated above the Appellant would be unable to identify in court whether he had misunderstood or been misinterpreted until the decision was explained to him in a language he understood.
22. It is a trite observation that a judge need not address in detail every single argument advanced before her, nor consider in isolation every single piece of evidence. She must weigh all of the evidence before her, and give clear reasons for her conclusions such that the parties, and in particular the losing party, can understand the reasons for her decision.
23. The failure of the First-tier Tribunal to address and determine whether the absence of an interpreter in his chosen language deprived him of a fair hearing constitutes a clear error of law. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different. That in my view is the correct test to apply.

24. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

25. I indicated to Mr Vokes that if I found an error of law would the Appellant be content to have the matter heard in Manchester where I was confident that Iranian Kurdish speaking interpreters were available. He confirmed with his client that this was the case.

Decision

26. I set aside the decision of the First-tier Tribunal as containing a material error of law

27. In this case I have determined that the case should be remitted as I have found there was an error of law because the Appellant did not have a fair hearing due to the refusal to adjourn and obtain an interpreter in his chosen language. In this case none of the findings of fact are to stand and the matter will be a complete re hearing.

28. I consequently remit the matter back to the First-tier Tribunal sitting at **Manchester** to be heard on a date to be fixed before me and I made the following directions for the resumed hearing:

- **Iranian** Kurdish Interpreter
- List for 3 hours

Signed

Date 6.8.2017

Deputy Upper Tribunal Judge Birrell