



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06095/2017

THE IMMIGRATION ACTS

Heard at Field House
On 5 December 2017

Decision & Reason Promulgated
On 8 December 2017

Before

The Hon. Mr Justice Morris
Upper Tribunal Judge Southern

Between

[K A]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A. Bandegani, counsel instructed by Duncan Lewis, Solicitors

For the Respondent: Mr T. Melvin, Senior Home Office Presenting Officer

DECISION

1. The appellant, who is a citizen of Jordan, arrived in the UK in July 2007 and was admitted as a visitor. He overstayed that leave and next came to notice on 20 July 2017 when he was encountered by immigration officers during an enforcement visit to commercial premises. The appellant produced a counterfeit French passport and, having been served with notice of liability to be removed, he claimed asylum.

2. The appellant said he faced a risk of death or persecutory ill-treatment on return to Jordan at the hands of relatives of a former girlfriend because they did not approve of that relationship. Those relatives rejected his proposal of marriage and when they then discovered that she was pregnant they accused him of rape and attacked him, that being in the presence of police officers who participated in beating the appellant. The appellant points to that police involvement as indicative of the involvement of state agents in the persecutory ill-treatment he claims to have suffered. He was then dispossessed of all he owned and fled Jordan for his own safety.
3. The respondent refused the claim because it was not accepted that the appellant's claim was true.
4. The appellant was unrepresented before the judge and sought an adjournment, explaining that he had paid £5,000 to a barrister who then said he could not attend to represent him. The judge refused that application on the basis that the appellant had had sufficient time to instruct a lawyer.
5. The first of the grounds upon which permission to appeal was sought and granted is that in refusing the application for an adjournment the judge made an error of law. It is submitted that had the judge engaged with the application being pursued he would have appreciated that the appellant had received wholly inadequate legal advice from his former representatives; that as the appellant was in detention it was not possible at such short notice to instruct fresh representatives, although Duncan Lewis were willing to accept instructions but could not arrange to see the appellant in detention until after the date of the hearing and that, as this was a protection claim, the judge was required to give anxious scrutiny to the application but he failed to do so. Indeed, it is not apparent that the judge made any enquiry into the circumstances that led to the appellant, who had demonstrated an intention and ability to fund legal representation, came to be without representation at the appeal hearing.
6. Mr Bandegani drew attention also to the fact that shortly before the hearing the appellant had made a written application for an adjournment, explaining that he now had no legal representation and, being in detention at Harmondsworth, he was "struggling to get a solicitor due to this reason".
7. The appellant's grounds, adopted and developed in submissions by Mr Bandegani, do identify matters that give rise to cause for concern. With respect to the judge of the First-tier Tribunal, this determination appears on its face not to have been produced with the care that was required. There are many typographical errors which suggests that it was not checked or proof read. The judge contradicts himself in saying both that he had a witness statement from the appellant and that he did not have a statement. It should have been obvious to the judge that the grounds of appeal, despite being professionally drafted, disclosed a fundamental misunderstanding of the legal framework in play in advancing the appeal.

However, despite this, the only reason given by the judge for refusing the application for an adjournment was that the appellant had had sufficient time to arrange for legal representation.

8. But of course, that is precisely what the appellant had thought he had done in retaining, and paying for, professional representation. It appears not to be in dispute that it was only after he had done so that the representative informed him that he would not, after all, provide representation, leaving the appellant to find a fresh legal representative. Further, his present solicitors have explained that they could not arrange an appointment to take instructions from the appellant, who remained in detention, until after the date of the hearing.
9. The duty of the judge was to ensure that the appellant received a fair hearing of his appeal. In refusing the application for an adjournment he left out of account material considerations and that indicates that he did not bring to his task the anxious scrutiny demanded of him in determining a protection claim.
10. On behalf of the respondent, Mr Melvin submitted that the judge dealt adequately with the adjournment request and that it was open to him to refuse the application. Mr Melvin submitted also that the appellant had ample time to make arrangements for his representation.
11. We are satisfied that, in the circumstances, it was not reasonably open to the judge to refuse the application for an adjournment, at least without carrying out a proper enquiry into the circumstances in which the appellant had found himself without legal representation. Therefore, that is sufficient to establish that there has been unfairness such as to amount to an error of law.
12. The next question to be addressed is whether that error of law was material to the outcome, such as to require that the appeal to the UT be allowed to the extent that the decision to dismiss the appeal is set aside and the appeal is remitted to the F-tT to be determined afresh.
13. The consequence of our conclusion that the application for an adjournment should have been granted is that the appellant has been deprived of what he reasonably sought, which was to present his case with the benefit of professional legal representation. It might be observed that the respondent could have, but chose not to, certify this asylum claim as clearly unfounded and it follows that the claim is one that was considered at least arguable.
14. Certainly, the respondent has raised a respectable challenge to the appellant's claim and he may or may not be able to establish that he has a well-founded fear of persecution on return to Jordan for a reason recognised by the Refugee Convention. We are, however, satisfied that he should at least have a proper opportunity to advance that claim before the First-tier Tribunal, an opportunity that we are satisfied has so far not been provided.

15. In the light of that conclusion, it is unnecessary for us to address the other grounds of appeal.
16. For these reasons, the appeal to the Upper Tribunal is allowed. The determination of First-tier Tribunal Judge Khan is set aside in its entirety and the appeal is remitted to the First-tier Tribunal to be determined afresh.

Summary of decision:

1. First-tier Tribunal Judge M. A. Khan made a material error of law and his decision to dismiss the appeal is set aside. His determination is to be set aside in its entirety.
2. The appeal to the Upper Tribunal is allowed to the extent that the appeal is remitted to the First-tier Tribunal to be determined afresh.

Signed



Upper Tribunal Judge Southern
Date: 5 December 2017