



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/07241/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at City Centre Tower,
Birmingham
On 6th February 2018**

**Decision & Reasons
Promulgated
On 5th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**W S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Semega-Janneh, Counsel instructed by Bankfield
Heath Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of Malawi born on 13th December 1968. The Appellant first arrived in the United Kingdom on 4th May 2003 when she was given temporary admission for further investigation. The Appellant absconded until she was arrested on 12th July 2009. Eventually and on 30th April 2012 the Appellant applied for asylum. That application was refused for the reasons given in a Refusal Letter dated 10th September 2014. The Appellant appealed, and her appeal was eventually heard by

First-tier Tribunal Judge Parker (the Judge) sitting at Stoke-on-Trent on 1st September 2017. He decided to dismiss the appeal on asylum, humanitarian protection, and human rights grounds for the reasons given in his Decision dated 19th September 2017. The Appellant sought leave to appeal that decision and on 13th October 2017 such permission was granted.

Error Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. At the hearing before the Judge, the Appellant requested an adjournment as the Tribunal had not supplied the Appellant with an interpreter in the Nkende dialect of her first language. The Judge refused the application for the reasons given in paragraph 12 of the Decision.
4. At the hearing before me, Mr Semega-Jannah argued that there had been a procedural irregularity by the Judge amounting to an error of law. The Judge had erred in refusing the application for an adjournment. The Appellant had been denied a fair hearing by the absence of an appropriate interpreter. The duty was on the Tribunal to provide the right interpreter. It was known that there were at least two Tribunal interpreters who spoke the Nkende dialect. If the appeal had been listed at a hearing centre where those interpreters operated there would have been no problem. The absence of an appropriate interpreter was not the fault of the Appellant. The Appellant had given her evidence in English at the hearing, but she had not been happy to do so.
5. In response, Mr Mills argued that there had been no material error of law in the decision of the Judge to refuse the application for an adjournment. Mr Mills referred to the Rule 24 response and the decision in **Nwaigwe (adjournment fairness) [2014] UKIAT 000412**. He pointed out that there had already been considerable delay in the disposal of this appeal prior to the hearing before the Judge. The appeal had been lodged in October 2014 and there had been no less than seven adjournments of the hearing owing to interpreter problems. The Appellant had grown up in Malawi, a country where English was an official language. The Appellant had lived in the UK for many years and had studied in English. The Appellant's representative had indicated at the hearing before the Judge that he was happy for the appeal to be decided on written evidence and submissions. The Judge had been satisfied at paragraph 13 of the Decision that the Appellant was fluent in English.
6. I am loathe to find an error of law in the decision of the Judge not to adjourn the hearing of the appeal yet again in circumstances where there had been considerable delay in disposing of the appeal including no less than seven previous adjournments. I am aware that avoiding delay is a factor to be considered when deciding the overriding interest in any particular case as stated in paragraph 2(2)(e) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

However, ensuring so far as practicable that the parties are able to participate fully in proceedings is also a factor as given in Rule 2(2)(c) of those Rules. It is apparent to me that through liaison between the Tribunal and the Appellant's representatives it would not be too difficult for one of the known Tribunal Nkende interpreters to attend a fixed hearing date in order to interpret. As stated at the hearing before me it is the duty of the Tribunal to ensure that an appropriate interpreter is available, and the unfortunate history of this appeal has not been the fault of the Appellant. The Appellant can only participate fully in the proceedings by giving evidence in her first language and in which she is fluent. It was suggested by Mr Mills that the Appellant is fluent in English, but the Judge noted at paragraph 13 of the Decision that at times the Appellant "did not know the precise word". As recorded in the last sentence of paragraph 12 of the decision, the Judge decided to refuse the application for an adjournment on the understanding that no such interpreter in the Nkende language could be found. As mentioned above, this is not correct.

7. My decision is that the failure by the Tribunal to provide an appropriate interpreter for the hearing prevented the Appellant from fully participating in the proceedings and amounts to a procedural error being a material error of law.
8. I did not proceed to remake the decision in the appeal because there was no interpreter to facilitate the Appellant in giving her evidence, although on this occasion this was not the fault of the Tribunal. However the decision in the appeal will be remade in the First-tier Tribunal in accordance with paragraph 7.2(b) of the Practice Statements.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

The decision in the appeal will be remade by the First-tier Tribunal.

Anonymity

The First-tier Tribunal made an order for anonymity which I continue for the reasons given by the First-tier Tribunal.

Signed

Date 28th February 2018

Deputy Upper Tribunal Judge Renton