



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/08412/2014

THE IMMIGRATION ACTS

Heard at Field House
On 21st February 2018

Determination Promulgated
On 22nd February 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

ZM
(ANONYMITY ORDER MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Packer of Duncan Lewis solicitors
For the Respondent: Mr A Byass, GLD

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as ZM. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. It is uncontentious that I have jurisdiction to hear and determine this appeal.
2. On 10th June 2016 I found an error of law and set aside the decision of the First-tier Tribunal for the following reasons:
 1. The appellant was granted permission to appeal the decision of First-tier Tribunal Judge Telford promulgated on 11th April 2016. ZM did not appear in person at his hearing before Judge Telford because he had been removed from the UK. There were pending judicial review proceedings in connection with that removal. An earlier decision of the First-tier Tribunal in 2014 had been set aside for unlawfulness – ZM's asylum appeal had been determined under the "Fast Track Scheme". An application for an adjournment was made to Judge Telford which he refused. It is a little confusing on what basis he refused the adjournment – on the one hand he seems to be saying that because ZM is in Cameroon and able to send emails he could not be in hiding as he

claims and this affects his credibility and thus his reasons for an adjournment which included that he be able to give live evidence on matters where the credibility of his asylum claim had been challenged.

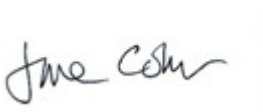
2. Permission to appeal was sought not only on the adjournment issue but also that the Judge had taken impermissible notice of a previous determination of the First-tier Tribunal which had been set aside as being in error (the "Fast track" determination), had reached conclusions unsupported by evidence (that there was no evidence of torture despite ZM referring to torture in his interview record and the acceptance of him into the Helen Bamber Foundation) and that the lack of evidence was damaging to his claim rather than neutral. There was no evidence from ZM's friend yet the judge found that ZM's account differed; the judge was mistaken about the purpose of ZM's arrival in the UK. The judge fails to consider the impact on ZM of his claimed detention and proceeded on the basis that there had been no such detention. The judge failed to address adequately with reasons the claim that ZM was bisexual.
3. As Mr Deller so eloquently put it, taken as a whole there was a general unlawful unfairness in the proceedings both procedurally and in the approach of the judge to the evidence before him.
4. I agree. I set aside the decision to be remade.
3. There then followed a number of case management hearings to try to enable ZM to give evidence by video link.
4. Today, Mr Byass, on behalf of the SSHD accepted that ZM's appeal should be allowed on asylum and Article 3 grounds, an appeal with the same factual matrix having been allowed in the case of PA/06114/2017. I therefore formally allow the appeal by ZM on asylum and human rights grounds – Article 3.
5. Having allowed the appeal on asylum and Article 3 grounds, it is not necessary for me to determine the Article 8 ground of appeal.
6. It will be seen from the brief history of this appeal, set out above, that considerable time has elapsed since I set aside the earlier First-tier Tribunal decision. I have on previous occasions expressed my concern at the length of time that it was taking for this appeal to come to substantive hearing. I note that Mr Byass, on behalf of the SSHD, stated that the SSHD will actively liaise with ZM's solicitors regarding the return of ZM to the UK. Given the delays to date and the basis upon which this appeal is allowed I anticipate that a quick decision will be taken by the SSHD to comply with and activate this appeal outcome.

Conclusions:

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 and I re-make the decision in the appeal by allowing it on asylum and Article 3 grounds.

Date 21st February 2018



Upper Tribunal Judge Coker