



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/02720/2017**

Appeal Number:

THE IMMIGRATION ACTS

**At: Manchester Piccadilly
On: 03 April 2018**

**Decision and Reasons
Promulgated
On: 01 May 2018**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**PG
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Evans, Waddell Taylor Bryan Sols
For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iran born in 1971. She appeals with permission against the 15th August 2017 decision of the First-tier Tribunal (Judge Herwald) to dismiss her protection appeal.

Anonymity Order

2. This appeal concerns a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Findings

3. The crux of the onward appeal is that a procedural unfairness has arisen, in the Appellant’s appeal being determined by the First-tier Tribunal in the absence of the Appellant or a representative. When the matter came before Judge Herwald he could see that the Appellant had previously been represented by GMIAU, but they had withdrawn; without any explanation for the Appellant’s absence he could not be satisfied that she would attend at a later date and decided to proceed with the hearing. He did so and dismissed the appeal.
4. What Judge Herwald could not have known was that at the dates that the notices of hearing were sent to the Appellant, the 6th April 2018 and the 13th April 2017, she was in the grip of a psychosis, and therefore unable to comprehend their contents. On the 27th April 2017 she was detained under section 2, and then 3, of the Mental Health Act. She remained in hospital until the 20th July 2017. At the time of her admission she was noted by clinicians to be ‘catatonic’. She was diagnosed with severe depression with psychotic features; she has now been diagnosed with schizoaffective disorder. In a letter dated 21st August 2017 from Pennine Care NHS Trust Mr Gary Atherton of the Secondary Care Assessment Team states that in the view of the Appellant’s team the Appellant would, at the operative time, “been in no fit state to respond to or even understand the nature of the letters sent to her”.
5. In the circumstances Mr Bates had no objection to the matter being remitted to the First-tier Tribunal for hearing *de novo*. Nor did he have any objection to the listing being shortly delayed to enable the Appellant’s representatives to obtain a detailed psychiatric report.

Decisions

6. The decision of the First-tier Tribunal contains an error of law such that the decision must be set aside.
7. The decision is to be remade in the First-tier Tribunal by any Judge other than Judge Herwald.
8. The matter is not to be listed before the 4th June 2018.

9. There is an order for anonymity.

Upper Tribunal Judge Bruce
3rd April

2018