



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/04708/2017**

Appeal Number:

Heard at Field House

On 6th April 2018

**Decision & Reasons
Promulgated
On 1st May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**J S
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer

For the Respondent: Mr N Paramjorthy of Counsel, instructed by A&P Solicitors

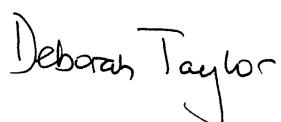
DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Oliver made following a hearing at Hatton Cross on 2nd October 2017.
2. The claimant, a 39 year old Sri Lankan man, claimed asylum on 7th November 2016 and was refused on 8th May 2017. He appealed, and the appeal came before Judge Oliver.
3. The claimant had served a bundle of background documents on 15th September 2017 but delayed serving the main bundle of documents until the day of the hearing itself. These documents consisted, inter alia, of a detailed medical report and a witness statement from the claimant's sister.

4. The judge recorded that, at the outset of the hearing, the Presenting Officer sought an adjournment to consider the late served documents. He said that he refused the request because the Presenting Officer had had an opportunity to consider the papers over the lunch adjournment. He went on to allow the claimant's appeal.
5. The Secretary of State subsequently sought permission to challenge the judge's decision on the grounds that he had committed a procedural or other irregularity capable of making a material difference to the outcome of the fairness of the proceedings by refusing the adjournment.
6. She relied on the Presenting Officer's note, which said that he had not had the opportunity to look at the bundle before lunch. After lunch he applied for the adjournment on the basis both of the late submission and on the fact that, given the claimant was calling his sister to give evidence, her file ought to be called for and looked at. He had only scanned the bundle and had not had an opportunity to read it properly. It was argued that the judge, by refusing the adjournment, or by refusing to give the Presenting Officer additional time to prepare, had unfairly disadvantaged the Home Office.
7. Permission to appeal was granted for the reasons set out in the grounds by Judge Lever on 29th December 2017.
8. At the hearing before me Mr Tarlow relied on his grounds and produced the original minute from the Presenting Officer, which states that the bundle consisted of 140 pages, 108 of which was new material. The Secretary of State was disadvantaged because there had been no time to sift through the extensive bundle of documents to establish what was relevant and what was not, and she had been deprived of an opportunity to obtain the sister's file.
9. Mr Paramjorthy recognised that the Presenting Officer was put in a difficult position but submitted that all representatives had to be pragmatic and the Secretary of State had not established that she had in fact been disadvantaged. She had not shown what difference having the sister's file would have made. Late service in itself did not necessarily amount to an error such that the decision had to be set aside.
10. I accept from the Presenting Officer's note that he considered that he had been given inadequate preparation time as a consequence of the late service of these documents. I am satisfied that the inability of the Presenting Officer to prepare is sufficient to establish that justice has not been seen to be done.
11. In spite of Mr Paramjorthy's robust defence of the determination, it seems to me that the judge fell into a procedural error such that his decision has to be set aside. It will have to be remade by a judge other than Judge Oliver at a date to be notified at Hatton Cross.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed
2018
Deputy Upper Tribunal Judge Taylor

Date 30 April