



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/06470/2017

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

**Oral determination given following
hearing**

On 4 December 2017

On 28 February 2018

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

**L C
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Parkin, Counsel, Duncan Lewis & Co Solicitors
(Harrow Office)

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

DECISION AND REASONS

1. The appellant in this case is a national of Guinea whose claim for asylum had been dismissed. His appeal was listed for hearing before First-tier Tribunal Judge Andonian sitting at Harmondsworth on 28 July 2017. For the reasons which follow it is not necessary for the purposes of this decision to consider the merit of the appeal.

2. The appellant appeared to be unrepresented and Judge Andonian has recorded that the appellant had told him “that he thought he was before me for a bail application” (see paragraph 2 of the Judge Andonian’s decision). Judge Andonian recorded that the appellant had two witnesses who attended but not to give evidence in this appeal because they had according to Judge Andonian “said that they were present in case the appellant was released on bail so that they could take him home”. I understand that it is the appellant’s case that they were there as sureties. Whatever precisely occurred at the hearing the judge decided that he would continue with the hearing anyway even though the appellant was not represented and had said that he was not ready for a hearing. Further, there was no interpreter present even though I am told on behalf of the appellant that his English was not of a sufficient standard to enable him to represent himself without an interpreter.
3. Before me today Mr Parkin, representing the appellant, also relies on a letter from a solicitor of Duncan Lewis who has informed the court that the details were properly given through the Tribunal prior to the hearing that Duncan Lewis were representing the appellant but that Duncan Lewis were never given notice of the hearing. So the position is that this appellant, who thought that he would be represented at the hearing of his appeal and that the hearing on that particular day was to consider whether or not he should be bailed, who lacked an interpreter and who did not call any of the witnesses he may have been advised to call, was obliged to represent himself as best as he could. Judge Andonian declined to adjourn the proceedings, even at the very least until what had actually transpired could be properly investigated. On behalf of the respondent today Mr Lindsay accepted that “clearly, the matters pleaded are well capable of giving risk to procedural unfairness” and he further accepted that he would have an “uphill task” to argue on these facts that the hearing had not been procedurally unfair. Although he could not formally concede this, he did not wish to mount any argument to the contrary.
4. In my judgement the circumstances were unfair, although it may well be that Judge Andonian himself was not aware of the fact that Duncan Lewis had previously notified the court that they were instructed and nor can Judge Andonian be blamed for the regrettable mishap that Duncan Lewis were not notified in advance of the hearing.
5. Be that as it may, this appellant is entitled to a fair hearing at which he is represented by the solicitors who had notified the Tribunal that they had been instructed and in those circumstances this case must be remitted back to the First-tier Tribunal for rehearing and I will so order.

Decision

I set aside the decision of First-tier Tribunal Judge Andonian as being vitiated by procedural unfairness, and remit the appeal back to the First-tier Tribunal, sitting at either Hatton Cross or Harmondsworth or any other venue which is administratively appropriate, for rehearing before any judge other than First-tier Tribunal Judge Andonian.

Signed:

A handwritten signature in black ink, appearing to read "Ken Craig". The signature is written in a cursive style with a long, vertical tail on the final letter.

Upper Tribunal Judge Craig

Dated: 22 February 2018