



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/07868/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Columbus House,  
Newport On 27 April 2018**

**Decision and  
Promulgated  
2018**

**Reasons  
On 3 May**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

**Between**

**SUCHAN MAHARJAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation**

For the Appellant: No appearance

For the Respondent: Mr K Hibbs, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Kainth in which he dismissed the appeal of the Appellant, a citizen of Nepal, against the Secretary of State's decision to refuse asylum and issue removal directions.
2. The application under appeal was refused on 4 August 2017. The Appellant exercised his right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Kainth on 20 September 2017 and was dismissed. The Appellant applied

for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge Keane on 31 October 2017 in the following terms

The appellant applied in time for permission to appeal against the decision of Judge of the first-tier Tribunal Kainth promulgated on 2 October 2017 in which the judge dismissed the appeal on asylum, humanitarian protection and human rights (Articles 2, 3 and 8) grounds. The grounds disclosed an arguable error of law but for which the outcome of the appeal might have been different. Given the chronology of relevant events and the appellant's conduct it was arguably unfair of the judge to have exercised his discretion so as to refuse the appellant's request for an adjournment. The decision under appeal had been made on 4 August 2017, the appellant acting in person gave notice of appeal against the respondent's decision on 16 August 2017 and the judge heard the appeal on 20 September 2017. Such a timescale was arguably "tight". The judge recorded at paragraph 6 of the judge's decision that the appellant had contacted four law firms with a view to securing representation. Two replied and two did not respond. The appellant was fairly to be characterised as a litigant in person who was doing his best to secure legal representation. The judge arguably should have granted his request for an adjournment. The application for permission is granted.

3. By a rule 24 response dated 17 November 2017 the Respondent opposed the appeal arguing that the Judge directed himself appropriately. The response asserts that the grounds of appeal are a disagreement with the findings and that the adjournment request was properly considered.
4. This appeal was first listed for hearing before the Upper Tribunal on 27 February 2018. There was no appearance by the Appellant. The file note shows that the Judge considered that it was appropriate to give the Appellant a further chance to attend as he had showed every intention until that time to pursue his appeal. The hearing was therefore adjourned.
5. At the hearing before me Mr Hibbs appeared for the Respondent and there was again no appearance by or on behalf of the Appellant. The court file showed that notice of the adjourned hearing had been served upon the Appellant at his last known address. No additional documentation had been filed by the Appellant and indeed the court file shows that no documentation had been filed by the Appellant since his application for permission to appeal against the First-tier Tribunal's decision. In these circumstances I considered that it was appropriate to proceed.

## **Background**

6. The history of this appeal is detailed above. The facts, not challenged, are that the Appellant is a citizen of Nepal born on 26 June 1988. He left Nepal arriving in the United Kingdom on 10 September 2009 with a Tier 4 student visa valid until 8 January 2013. On application in December 2012 this was extended until 27 July 2014 when his leave to remain expired. The Appellant was encountered on 2 June 2017 working illegally and he claimed asylum following his detention on 8 June 2017.
7. The basis of the Appellant's claim for asylum was his fear of persecution due to his political opinion and activity. He claimed to have been youth district president of the King Saver party in Nepal, to have published articles in his local newspaper and to have organised a rally. He claims that this activity caused him to come to the adverse interest of the Young Communist league and to have been attacked and injured on two occasions. The Appellant claimed that it was this fear of persecution that caused him to leave Nepal. He also claimed that since arriving in the United Kingdom he had written a book which had been sent to Nepal and seized by officials prior to publication.
8. At the hearing on 20 September 2017 the Appellant was unrepresented. He applied for an adjournment on the basis that he wished to be represented. He said that he had contacted four law firms two of whom had replied and said they were unable to represent him and the other two had not responded. The Judge refused the adjournment request noting that in his judgement the Appellant had sufficient time to make arrangements to be represented. The Judge noted that the Appellant was not seeking to rely upon any additional documentation and concluded that the appeal could proceed fairly and justly without there being any prejudice to the Appellant.
9. The Judge went on to hear evidence and submissions and he reserved his decision. In dismissing the appeal, the Judge made an adverse credibility noting in particular the substantial delay by the Appellant in submitting his claim, the Appellant's conduct in entering and remaining in the United Kingdom under a false premise and the failure of the Appellant to submit any documentation in support of his claim when such documentation should have been readily available

### **Submissions**

10. In the absence of the Appellant the only submissions on his behalf are those contained in the notice of appeal. The Appellant submits, in terms, that the refusal to grant an adjournment to enable him to be legally represented was

unfair. The Appellant adds that the findings are flawed because of inadequate reasoning and undue weight being given to discrepancies and inconsistencies in his account.

11. Mr Hibbs relied upon the rule 24 response.

12. I reserved my decision.

### **Decision**

13. The issues involved in this appeal are limited. The first issue, that upon which permission to appeal was granted, is whether the Appellant's application for an adjournment was unfairly refused. In my judgement it was not. The Appellant applied for an adjournment to seek legal representation. He had been in the United Kingdom for almost 8 years at the time of his detention and had been unlawfully present for the last three years. He clearly knew that he needed permission to be in the United Kingdom and, according to his account, he had known the need to claim asylum throughout his time in this country. He had sufficient time to seek legal advice. He was detained on 2 June 2017 and claimed asylum shortly thereafter. His application was refused on 4 August 2017. There was clearly sufficient time for him to secure legal advice and representation between the time that he was detained and the time of the Respondent's decision. Following the Respondent's decision, the Appellant remained in detention and he lodged his notice of appeal on 16 August 2017 and the appeal did not come to hearing until 20 September 2017. Again, this is more than sufficient time to secure legal advice and, if appropriate, representation. The Appellant confirmed to the Judge that he had sought such advice and that two of the four firms that he had approached had declined representation. There was no indication that if the matter was adjourned representation would have been secured. Indeed, although this for obvious reasons was no part of the Judge's decision, the Appellant has still not secured legal representation. The Judge carefully considered the application and I find no error of law in the decision to refuse the adjournment request.

14. The second issue concerns the Judge's findings. The grounds of appeal in this respect are not entirely clear but suggest that the Judge failed to give adequate reasons and attributed too much weight to discrepancies and inconsistencies. In fact, the decision of the First-tier Tribunal is, in my judgement well-reasoned and inevitable. The Appellant claimed that he was president of the King Saver party, that he published articles in his local newspaper and that he had written a book opposing the current Nepalese government. These are all matters capable of corroborative evidence and the Appellant failed to produce any documentary evidence whatsoever in support his

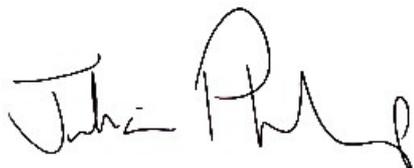
claims. The Judge quite rightly self directs to TK (Burundi) v SSHD [2009] EWCA Civ 40 at paragraph 54 of his decision. The Appellant was not even able to remember the name of the local newspaper in which he claimed to have published articles or the name of the hospital that he claimed to have attended for treatment. In these respects, the grounds of appeal are no more than a disagreement with the Judge's findings. It is of course pertinent to note that no additional documentary evidence was filed with the appeal to the Upper Tribunal and nothing has been filed since. There is no error of law and this appeal must fail.

### **Summary**

15. The decision of the First-tier Tribunal did not involve the making of a material error of law. I dismiss the Appellant's appeal. The decision of the First-tier Tribunal stands.

**Signed:**

**Date: 27 April 2018**

A handwritten signature in black ink, appearing to read 'J F W Phillips', written in a cursive style.

**J F W Phillips  
Deputy Judge of the Upper Tribunal**