



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

Appeal Number: PA/02533/2018

THE IMMIGRATION ACTS

**Heard at Glasgow
on 31 May 2019**

**Decision & Reasons Promulgated
on 8 July 2019**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

N Z

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A Adejumobi, of Immigration Advice Centre, Oldham
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This determination is to be read with:
 - (i) The respondent's decision dated 6 February 2018.
 - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
 - (iii) The decision of Designated FtT Judge McClure, promulgated on 10 October 2018.
 - (iv) The appellant's proposed grounds of appeal to the UT, stated in the application for permission to appeal filed with the FtT.

- (v) The refusal of permission by the FtT, dated 6 November 2018.
 - (vi) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal filed with the UT.
 - (vii) The grant of permission by UT Judge Gill, dated 16 January 2019.
 - (viii) The further directions by UT Judge Gill, dated 12 February and 8 April 2019.
2. Mr Adejumobi firstly directed attention to the factual issue identified in the grant of permission, "... whether or not the judge asked the appellant whether he was content to proceed and whether the appellant either failed to indicate that he was unwilling to do so or confirmed ... that he was content to proceed ...". The further directions of the UT indicate that it would "... consider the respondent's record and the judge's record in order to decide whether there was an outstanding application to adjourn the hearing or whether the appellant confirmed that he was content to proceed ...".
 3. There had been a hearing in the FtT on 11 September 2018. The appellant was represented. The hearing was aborted because the judge's computer record had become corrupted. By letter dated 14 September 2018 the appellant's representatives sought adjournment of the hearing fixed for 17 September 2018, so that the appellant could gather the fees required for further representation, a problem not of his making. That written request was not decided prior to the hearing before Judge McClure on 17 September 2018. It is not referred to either in his record of proceedings or in his decision.
 4. The judge's handwritten record of proceedings contains a brief summary of the claim, and then proceeds to a note of the evidence. The first line is, "Mr Z"; the second is, "content to proceed"; and there is then a note of evidence-in-chief, apparently elicited by the judge.
 5. In a statement dated 25 October 2018, submitted with his grounds of appeal, the appellant says that at the hearing on 17 September 2018 the judge:

"... mentioned he received an adjournment request although he was inclined to proceed seeing I was present. The Home Office representative explained ... the events of 17 September 2018. I highlighted to the judge I was unable to bring back one of the witnesses who had been present on 11 September due to childcare issues. The hearing proceeded."
 6. The judge's record of proceedings, and his decision, do not mention the absence of a witness.
 7. The record kept by the Home Office representative narrates:

'Judge said legal representatives are not coming as at the moment he [the appellant] hasn't put them in funds ...

[The appellant] advised that due to short listing his sister couldn't attend. Judge made no comment.'

8. The Home Office record goes on immediately to a note of the evidence. It says nothing further about whether an adjournment was considered, or the appellant's position about proceeding.
9. Mr Adejumobi submitted that there was a written application before the FtT for adjournment, on strong grounds, which the FtT was bound to resolve, and to give reasons, but there was nothing to be found in the decision, or even in the record. He further submitted that the appellant's statement that he raised the absence of a witness as a further basis for adjournment was supported by the record kept by the Home Office representative, and that to proceed without resolving that issue, and without recording any reason, showed further unfairness. He said that a fresh hearing was required.
10. Mr Govan said that some sympathy was due to the appellant over the collapse of the initial hearing, and agreed that if there had been unfairness, there should be a remit to the FtT. On whether unfairness had occurred, he said that all relevant materials had been identified, and the question was for the UT.
11. I indicated that the decision fell to be set aside.
12. The application for adjournment based on the abortive nature of the previous hearing, only shortly before, and the shortage of time to gather funds, was quite strong. The appellant had no part of the responsibility. The application, if not bound to be granted, at least required an explanation for refusal, or a clear record of its withdrawal. Without a fuller record, there is scope for an oversight, or a misunderstanding, having taken place.
13. The principle of justice being seen to be done tends in favour of the appellant.
14. The absence of a witness was a weaker basis for an adjournment. It is not shown that her attendance to speak to her statement might have added much to the case. However, it is another matter which needed to be decided, and an explanation given, if it was not abandoned. The Home Office record supports the appellant's position that the point was glossed over.
15. It was of course open to the appellant to abandon any application for adjournment and to elect to proceed. However, the records and the decision are too abbreviated for the UT to be satisfied that is what happened.
16. Procedural unfairness is established. The consequence is agreed, as follows.

17. The decision of the FtT is set aside. It stands only as a record of what was said at the hearing.
18. The nature of the case is such that it is appropriate under section 12 of the 2007 Act, and under Practice Statement 7.2, to remit to the FtT for an entirely fresh hearing.
19. The member(s) of the FtT chosen to consider the case are not to include Judge McClure.
20. The FtT made an anonymity direction. The matter was not addressed in the UT, so anonymity has been maintained herein.
21. The file will be sent to the FtT at Glasgow for relisting there, in accordance with usual practice of listing according to residence of appellants and not according to the whereabouts or convenience of representatives. Additionally, "cross border" hearings are liable to give rise to unnecessary complications administratively, and in the event of onward appeals.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

30 May 2019
UT Judge Macleman