



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/05323/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 28 May 2019**

**Decision & Reasons
Promulgated
On 25 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

**AAH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Heybrook of Counsel instructed by Caveat Solicitors
For the Respondent: Mr E Tufan, A Senior Home Office Presenting Officer

DECISION AND REASONS

1. In this matter the Appellant was granted permission to appeal by First-tier Tribunal Judge Grimmett. At paragraph 2 the learned Judge made the following observations which encapsulate the issue before me:-

“The Appellant is a minor now aged 16 who did not attend the hearing and was not represented. He says the Judge failed to treat him as a child and did not apply the Presidential Guidance. However, the Judge specifically refers to his age and that he is an unaccompanied asylum-seeking child in reaching his conclusions. However, it is arguable that the Judge erred in concluding that it was not possible that his family was targeted as the background evidence referred

considerable human rights abuses by Al-Sadr. It is arguable that the judge should have adjourned the appeal or given the Appellant's representative, who had failed to diarise the hearing, further time to try to contact the Appellant who may not have been aware of the hearing."

2. In submissions before me today Miss Heybrook said that the matter essentially focuses on whether there was unfairness in the way in which First-tier Tribunal Judge Herbert had treated the Appellant. She referred to paragraphs 5 and 24 of the judge's decision. At paragraph 5 the judge had noted the following:-

"Neither the receptionist nor the solicitor who was contacted appeared to have any direct knowledge of the case and a request to have the firm to call back with some explanation proved fruitless. I therefore proceeded to hear the case in the absence of the Appellant and the representative. It may well be that the Appellant has some reasonable explanation why neither he nor his representative were in appearance. That may be the subject of some further application or appeal."

3. Miss Heybrook also referred to paragraph 24 of the FtT Judge's decision which says as follows:-

"Whilst dictating this decision, the Appellant's solicitor phoned my clerk stating that the legal adviser who prepared this file is on maternity leave and the solicitor on duty has only currently seen the notice. There was an apology made over the phone as it was not put in the diary and apparently, they had not notified the Appellant of the hearing and they missed the notification themselves. There is nothing in writing to that effect and therefore I decided to proceed with the hearing as the conduct of this case by the solicitor is clearly unacceptable. I have no way of knowing if that information is genuine or not."

4. Miss Heybrook also said that there had been no real hearing that had taken place and the overriding objective had required that there be an adjournment and a new hearing when a child was involved. She said the other grounds of appeal related to whether or not the Appellant was treated appropriately within the Presidential Guidance when dealing with assessing the evidence of a child.
5. Mr Tufan in brief but appropriate submissions said that there were shortcomings from the representatives. He said it was a matter for me, but ultimately when considering issues in respect of fairness and noting that there was a child that these factors will have to be taken into account.
6. As I indicated during the submissions it is my judgment that it is appropriate for this matter to be remitted for a rehearing and that none of the current findings can stand. That remitted hearing will take place at the First-tier Tribunal. It is appropriate for me to say that the solicitors

acting on behalf of this child really should have done more. There should have been a witness statement or further documents from them dealing with what went wrong on the day of the hearing at the First-tier Tribunal, why they had failed to attend and why they had failed to inform the Appellant of the hearing date. I was also concerned that the solicitors refer to the overriding objective, but the overriding objective applies both ways. Much time was taken up by the First-tier Tribunal whereby the First-tier Tribunal Judge had made significant enquiries on three occasions through his clerk to seek to understand why there was a failure of attendance on 13th March at Taylor House. It is not the Tribunal's task to chase attendance at hearings. The system would grind to a halt if Judges had to put in calls to solicitors to ask if they will attend a hearing. Additionally this case has come into the list at the Upper Tribunal when there are many other cases which await hearing dates.

7. Therefore, although I make the decision that I do that this case should be remitted to the First-tier Tribunal, lessons have to be learned in terms of attendance at hearings by Appellants and their representatives.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and is set aside.

The matter is remitted to the First-tier Tribunal for re-hearing.

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 A Mahmood

Date: 28 5 19

Deputy Upper Tribunal Judge Mahmood