



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/09476/2018

THE IMMIGRATION ACTS

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

**Decision & Reasons Promulgated
On 11 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**H Q P
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Khan of Counsel, instructed by Thompson and Co Solicitors

For the Respondent: Mr I Jarvis, Senior Home Office presenting officer

DECISION AND REASONS

Introduction and Background

1. The appellant appeals against a decision of judge Mathews (the judge) of the First-tier Tribunal (the FTT) promulgated on 24 September 2018.
2. The appellant is a citizen of Vietnam. His asylum and human rights claim was refused on 19 July 2018. The appeal was heard on 29 August 2018 and dismissed on all grounds.

3. The appellant applied for permission to appeal to the Upper Tribunal. He contended that there had been a procedural unfairness which amounted to a material error of law as the judge had refused an application for an adjournment which was requested so that the appellant could obtain a medical report. The judge then went on to make an adverse credibility finding against the appellant because he had failed to supply medical evidence.
4. It was also contended that the judge had rejected evidence given by the appellant's partner without giving any reasons or explanation, and it was said that this also amounted to a material error of law.
5. Permission to appeal was granted by Upper Tribunal Judge Rintoul who found it arguable that the judge had erred in law in refusing to adjourn the hearing and thereafter drawing adverse inference from the lack of medical evidence, and it was also arguable that the judge did not adequately explain why the evidence of the appellant's partner was rejected.
6. Following the grant of permission to appeal the respondent did not lodge a response pursuant to rule 24 of the 2008 Procedure Rules.
7. Directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FTT had erred in law such that the decision must be set aside.

My Consideration and Conclusions

8. At the commencement of the hearing Mr Jarvis advised that the respondent accepted that the judge had materially erred in law as contended in the grounds and that the decision of the FTT should be set aside and remade with no findings preserved. Unsurprisingly Mr Khan was in agreement.
9. I find the respondent's concession to be rightly made and although the decision of the FTT has been prepared with care, I find that the judge materially erred in law as contended in the grounds upon which permission to appeal was granted.
10. With reference to the adjournment, the judge records at paragraph 7 that the appellant's solicitor had confirmed that funding had been granted by the Legal Aid Agency on 28 August 2018, the day before the hearing. However at paragraph 10 the judge records that there is no confirmation of funding being in place. The judge's record of proceedings indicates that the solicitor confirmed that funding was in place and this was confirmed by an email. Mr Khan submitted a further copy of that email from the Legal Aid agency.
11. In refusing the adjournment application the judge records that the application was not made in writing and no notice of the application had been given. There had in fact been a previous application in writing which had been refused by a tribunal caseworker on the grounds that a report had not been commissioned. The principle to be applied in considering whether to grant an adjournment, is whether an adjournment is required

in order for there to be a fair hearing. In this case the judge erred in refusing an adjournment on the basis that there was sufficient evidence to fairly decide the case, but then made an adverse finding against the appellant because medical evidence had not been submitted. The judge observed that there had been a previous application for an adjournment, but that did not preclude a further application particularly because there had been a change in circumstances in that after the refusal of the initial application, funding had been granted. In the circumstances it is my view that the respondent was correct to concede that refusing an adjournment was unfair, and the medical report may be material, and therefore there has been a material error of law.

12. I am also satisfied that the judge materially erred in law at paragraph 36 in finding the evidence given by the appellant's partner to be inadequate. Findings must be supported by adequate reasons so that the parties know why evidence has been accepted or rejected. In this case no adequate reasons are given.
13. I find that the errors referred to above render the FTT decision unsafe and therefore it must be set aside. It was accepted by both representatives that no findings of fact should be preserved.
14. The decision must be remade. I have considered the Senior President's Practice Statements at paragraph 7.2 and find that the appropriate course is to remit the appeal back to the FTT to be heard afresh. This is because substantial judicial fact-finding is required and it is more appropriate for such fact-finding to be carried out by the FTT.
15. The appeal will therefore be heard again by the FTT and the parties will be advised of the venue, time and date in due course. The appeal is to be heard by an FTT judge other than judge Mathews.

Notice of Decision

The decision of the FTT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FTT with no findings of fact preserved.

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
2019

Date 28 January

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

I make no fee award. The issue of any fee award will need to be considered by the FTT.

A handwritten signature in black ink, appearing to be 'M A Hall', written in a cursive style.

Signed
2019

Date 28 January

Deputy Upper Tribunal Judge M A Hall