



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-006211
First-tier Tribunal No:
PA/52880/2021
IA/07614/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 April

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

JA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Begum, solicitor from SB Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 27 March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Sweet (“the judge”), promulgated on 24 October 2022. By that decision the judge dismissed the Appellant’s appeal against the Respondent’s refusals of his protection and human rights claims. In essence, the Appellant had asserted that his involvement with Bangladeshi politics would have placed him at risk on return, that he had established both private and family lives in the United Kingdom, and that removal would violate his Article 8 rights.

Decision of the First-tier Tribunal

2. Following the Respondent’s refusals, the Appellant elected to have his appeal decided without a hearing. The judge proceeded to follow that course of action. The judge clearly deemed it to be significant that the Appellant had not submitted himself for cross-examination and thus the written evidence could not be tested at a hearing. He duly dismissed the appeal on protection grounds. The judge went on to consider the various strands of the Article 8 arguments but concluded that removal would not be disproportionate.

Grounds of appeal

3. The grounds of appeal essentially say that the judge failed to deal with evidence and/or should have listed the case for an oral hearing if cross-examination of the Appellant had been deemed important.
4. Following the grant of permission the Respondent submitted a rule 24 response in which it was stated that the Appellant’s appeal would not be opposed, primarily on the basis that the judge could, and perhaps should, have converted the case into an oral hearing given the concerns expressed in the decision.

Conclusions

5. At the hearing Ms Everett confirmed that the appeal was not being opposed, but founded that position on the judge’s failure to have dealt

with the evidence that was before him rather than the point raised in the rule 24 response.

6. In my view Ms Everett was right to have adopted that position. The Appellant had elected, presumably on an informed basis, to have had his appeal decided without a hearing: that was a risk he took in terms of the absence of any cross-examination and the testing of evidence. There is no error of law in respect of the judge's decision to proceed to decide the appeal without a hearing.
7. However, it is quite clear that there was evidence before the judge in the form of witness statements and other materials. This being the case, the judge was obliged to engage with that evidence and assess it on its merits. If the evidence was to be rejected, legally adequate reasons had to be provided.
8. Unfortunately, the judge did not do this and the reader of his decision is left in the dark as to what was made of the evidence and, if it had been rejected as it implicitly was, the reasons for this.
9. The parties were agreed that the appeal would have to be remitted to the First-tier Tribunal for a complete rehearing. That must be right in the particular circumstances of this case.
10. Therefore, I conclude that the judge materially erred in law, that his decision should be set aside, and that the appeal should be remitted to the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal involve the making of an error of law. That decision is set aside.

This appeal is remitted to the First-tier Tribunal (Taylor House hearing centre) for a complete re-hearing, with no preserved findings of fact.

The remitted hearing shall not be conducted by First-tier Tribunal Judge Sweet.

H Norton-Taylor

Appeal Number: UI-2022-006211
First-tier Tribunal Numbers:
PA/52880/2021, IA/07614/2021

**Judge of the Upper Tribunal
Immigration and Asylum Chamber**

Dated: 11 April 2023