Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2022-005510
FIRST-TIER NUMBER:PA/03071/2020

THE IMMIGRATION ACTS

Heard at Edinburgh	**Decision Promulgated on**
On 30 June 2023	**On 23rd of November 2023**

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE MACLEMAN

Between

M.A.I.

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Haddow, instructed by Gray & Co. Solicitors.
For the Respondent: Mr Mullen, Senior Home Office Presenting Officer.

DECISION AND REMITTAL

1. The appellant came to the United Kingdom from Libya in 2018. He claimed to be entitled to the protection of the Refugee Convention on the basis of a well-founded fear as a member of the Warshefana tribe, who, it is said, are perceived to have been supporters of the Gaddafi regime and are the target of attacks from militias with rival tribal affiliations and political affiliations. He was interviewed. The respondent provided an interpreter for the interview. The interpreter spoke and understood the Arabic of Iraq. The appellant said during the interview, and his representatives asserted several times afterwards to the respondent, that the interpretation was unsatisfactory and that the appellant had not had a proper opportunity to put his case forward. The respondent made no reply to those submissions other than to issue a decision rejecting the appellant's asylum claim on the specific basis that it was made, but granting the appellant humanitarian protection until 2025 on the basis of his nationality (which the respondent accepted).

2. The appellant appealed against the rejection of his asylum claim. He sought to support his claim by psychiatric evidence. The evidence was not immediately available, but in due course was presented, and was available to the First-tier Tribunal. The appellant complied in all material respects with the First-tier Tribunal's directions and produced an appeal skeleton argument (ASA). The respondent provided no substantive response to the ASA.

3. The respondent's failure to do so was not only a breach of the general Practice Direction. The respondent had been directed by the First-tier Tribunal no fewer than nine times to respond specifically to the allegation about the interpreter at the interview. The direction of the 19 January 2022 indicated that if no review was provided, the respondent would be taken as having no issue with the submissions in the ASA. In the direction of 3 May 2022, the First-tier Tribunal indicated that if there was no response, the respondent would be deemed to rely solely on the refusal decision. At the date fixed for the hearing, there was no attendance by or on behalf of the respondent. However, the hearing could not proceed, because the interpreter booked by the First-tier Tribunal was not a Libyan Arabic interpreter. The matter was adjourned, and the respondent was again directed to provide a review.

4. The appeal was then relisted and was to be heard by Judge Farrelly on 13 July 2022. This time the respondent was represented. There was still no review by the respondent, but the respondent's representative at the hearing asserted that the interview was reliable, and that the appellant's psychiatric evidence ought not to be accepted as sufficient to explain the defects in the appellant's own account of his history. Those submissions amounted to arguments going beyond the reasons for refusal letter.

5. The appellant's representatives submitted to Judge Farrelly that the respondent ought not to be entitled to rely on those arguments, because of the failure to provide the appropriate material in advance of the hearing, and because of the directions which had set out the specific consequences of the respondent's continued failure. Judge Farrelly appears simply to have decided that he was not bound to accept the position set out in the directions. His decision contains no indication of any discussion of the procedural background of the hearing, or of any specific consideration of whether the respondent's position ought to be affected by the failures to which we have referred. Judge Farrelly concluded that the interview was reliable, that the appellant was not entitled to credit, and that the appeal on asylum grounds should be dismissed.

6. Permission to appeal against his decision was granted by Judge Blundell on application to this Tribunal. He remarked that he thought it at least arguable that the judge was required to engage in his decision with the respondent's failure to comply with the directions. He indicated his provisional view that a party who sought to escape the pre-determined consequence of the failure to comply with an order of the sort indicated is required to make an application for relief from sanctions. He also granted

permission, though less readily, on grounds relating to Judge Farrelly's treatment of the psychiatric evidence.

7. Following the grant of permission, there was a rule 24 response from the Secretary of State, and a rejoinder from the appellant. The Secretary of State asserted in her rule 24 response that the decision on the appeal was for Judge Farrelly to make and that he was right not to be influenced by hypothetical conclusions reached by other judges in the course of making directions that the Secretary of State had ignored.

8. That the hearing before us, Mr Mullen readily indicated that he would be in difficulty in resisting the appellant's grounds. He accepted that it appeared to be unfair for the Secretary of State to be relieved of the consequence of her failure to comply with directions, without any apparent substantive consideration of the procedural history. In the circumstances, the appellant was taken by surprise by the Secretary of State's challenge to the psychiatric evidence which had not been adumbrated in advance. Further, the failure to deal at any stage with the appellant's allegations about interpretation at the interview was a matter of concern. Mr Mullen asked us to accept that the Secretary of State's position was that she sought to cooperate in the work of the Tribunal. He invited us to set aside Judge Farrelly's decision for error of law.

9. We entirely agree with the position taken by Mr Mullen. In the circumstances it would be wrong to attempt to come to any profound conclusions of law, but it does appear to us right that directions made by a Tribunal should be complied with; and that a party who does not comply with those directions is not entitled to take a position of simply ignoring them, but must provide an explanation for the lack of compliance and must apply to avoid the consequences of failure to comply. How extensive a treatment is required in the decision itself will depend on the circumstance of the case. We are confident, however, that in the present case, with the history we have indicated, stretching over many months, the appellant was entitled to an explanation of why the judge took the position he did.

10. For the reasons set out above, we find that Judge Farrelly's decision was procedurally unfair and that he accordingly erred in law in making it. We set aside his decision.

11. We direct that the matter be remitted to the First-tier Tribunal for a fresh decision. The entire procedure before the First-tier Tribunal is to commence afresh from the point at which the ASA is submitted: the matter is therefore to be the subject of directions in the First-tier Tribunal for the submission by the appellant of a fresh or amended ASA. The procedure will then follow that set out in the current Practice Statement.

C.M.G. Ockelton

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 8 November 2023