



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005030

First-tier Tribunal Nos: HU/53055/2021
IA/08287/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 1 July 2024**

Before

**UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE BLACK**

Between

MOHAMMAD HAFIZUE RAHAMAN
(no anonymity order made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Nathan, Counsel, instructed by Wilson & Co
For the Respondent: Mrs A Nolan, Senior Home Office Presenting Officer

Heard at Field House on 6 March 2024

DECISION AND REASONS

(extempore judgment)

1. This is an appeal by a citizen of Bangladesh born in 1982 against the decision of the First-tier Tribunal to dismiss his appeal against the decision of the Respondent on 16 June 2021 refusing him leave to remain on human rights grounds.
2. We have the benefit of representation by Mr Nathan and Mrs Nolan who are both experienced immigration advocates. The judge in the First-tier Tribunal had no such assistance. The appellant at that stage was unrepresented and for reasons of his own, neither was the Secretary of State. This was a difficult position for the judge and it is quite plain to us from having had the opportunity of listening to the Record of Proceedings as well as considering the papers before us that the judge was presented with someone who more than once expressed himself anxious to have a decision made and to get on with his life.

3. Nevertheless, we have come to the conclusion that the Decision and Reasons has to be set aside and the simple reason is, we find, that the judge did not have proper regard for the vulnerability of the appellant. Having said that it would be wrong if this were seen as a harsh and condemnatory criticism of the judge and it would be very wrong to suggest that the judge was indifferent to the appellant. Rather the judge was conspicuously anxious to try and assist the appellant but we find, as the case unfolded, he did not do properly what he had set out to do at the beginning.
4. The judge referred, appropriately, to guidance that is given to deal with vulnerable people. The judge identified the guidance accurately as the Joint Presidential Guidance Note Number 2 of 2010. This was an encouraging start but the judge did not heed the guidance given.
5. One of the things that he was required to do was to introduce himself and explain the roles to the person in the hearing room. This was not followed. We do not say that this would have been itself an example of material unlawful activity but it really should have been more prominent in the judge's mind. However the real problem was that the appellant presented himself as someone who was not well. Approximately a third of the way into the hearing the appellant collapsed. We do not know exactly what happened (we cannot know) but it seems that he fainted and fell to the ground. The judge arranged for first aid and water was provided and some reassurance given but the judge asked rather closed questions about whether the appellant wanted to continue and he said that he did.
6. The answers recorded suggest at that point that the appellant, understandably, was a little confused of what had happened to him and what was going on. We know that the judge knew, because he had made reference to it, that the appellant had a history of mental health problems. The same evidence that supported that conclusion indicated that at the time of the hearing the appellant was taking medication. We see no need to list it. It includes drugs which are recognised by us as commonly used medication in the treatment of mental illness. But it should have been plain to the judge that the appellant was probably not a well man. Where we find the judge erred was in continuing with the hearing after the appellant had fainted without even giving a short break that the appellant asked for and an opportunity to take tablets. We do not know what happened to those suggestions. The appellant asked for them and the judge appeared to acquiesce and then it seems forgot about them. We simply cannot be confident that the appellant was in any fit state to give a proper account of himself and it follows from that that we are not satisfied that the appellant had a fair hearing. In fact we rather incline to the view that he did not. As we have said, the judge's fault is not an indifference but in not being more proactive when it became clear that the appellant was having problems of some kind.
7. The grounds of appeal, other than an amendment to the grounds which was dealt with at the start of the hearing and permitted, were not settled by Mr Nathan or his present solicitors and they give us some concern. For example it was suggested in the grounds quite specifically that the judge did not deal with the renewed application for an adjournment but as far as we can see there was no such renewed application for an adjournment. The appellant did say that he was looking for support and, as Mr Nathan pointed out, the judge erred in his response to that by not only offering legal advice but by offering wrong legal advice by telling him that no legal aid was available which it may or may not have been, we do not know, and the judge could not have known either.

8. Mrs Nolan pointed out how some of the grounds were misconceived and we agree with her but, as Mrs Nolan said, the real issue is where the judge really took on board the appellant's condition. With respect, Mrs Nolan is right, and our judgment is that he did not. This was not a properly conducted hearing for the reasons given and it means that we have to set it aside and have to order that the case to be heard again in the First-tier Tribunal. There has been no proper hearing of this appeal. Obviously there are no findings that can be preserved.
9. Things are rather different now. The appellant has moved from being an unrepresented litigant to a person represented by a firm with a lot of experience in immigration work. We do not know what will happen on the next occasion but it would be very much in the appellant's interest that he continues to be represented. We do not know anything about funding but we do make the observation that this man is not well and it would be very much against the interests of justice for him not to be represented on the next occasion if there is any way in which that can be properly achieved. It is not for us to say anymore than that. Nothing here is intended to indicate anything about the underlying strength of the application he has made. Our concern is whether or not he had a fair hearing and we have concluded that he did not.
10. For all of these reasons we find the First-tier Tribunal erred in law. We set aside its decision and direct that the case be heard again in the First-tier Tribunal.
11. Having listened to representations from Mr Nathan we remit the case to the First-tier Tribunal to be redetermined.
12. It is not our place to direct the First-tier Tribunal about where it conducts its hearings but Mr Nathan has made the point that the appellant's address has now changed and would appear to be in the usual catchment area for Taylor House so that may be a more appropriate place for the appeal to be listed.

Notice of Decision

13. The First-tier Tribunal erred. We set aside its decision and direct that the appeal be heard again in the First-tier Tribunal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 June 2024