



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004602

First-tier Tribunal Nos: PA/50321/2023
LP/01311/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 18th of January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

Mr MJA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance by or on behalf of the Appellant

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 7 December 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a national of Bangladesh, born in 1997. He made an application to enter the UK on a child visa in 2013. This was refused. He subsequently applied for an EEA family permit, which was also refused and then in around 2016 he became involved with the JR Chhatra Dal. His application for an EEA family permit was refused however he subsequently, on 14 January 2022, applied for a student visa to the UK, which was granted in a decision dated 27 January 2022.
2. The Appellant arrived in the UK on 10 February 2022 and he made an asylum claim some six months later on 2 August 2022 on the basis that he had a well-founded fear of persecution by the Awami League as a member of the Chhatra Dal wing of the BNP. This application was refused in a decision dated 9 January 2023. The Appellant appealed against this decision and his appeal came before First-tier Tribunal Judge Chana for hearing on 11 August 2023. In a decision and reasons promulgated on 26 August 2023, the judge dismissed the appeal, essentially on the basis that she did not find that he had been truthful that he was a vice president of the BNP student wing or that he had been threatened by the Awami League and that he would not be at risk on return to Bangladesh [31].
3. An application for permission to appeal was made, out of time, on the basis that at [16], the judge indicated that the Appellant confirmed he wished to represent himself at the hearing but was unwell and was unable to attend due to ill-health and had sought an adjournment but the judge made no reference to this or letters seeking an adjournment due to ill-health. It was further asserted in relation to [29] that the judge erred in finding that the Appellant confirmed he did not come to the attention of the authorities in Bangladesh.
4. An extension of time was granted and permission to appeal to the Upper Tribunal also granted by First-tier Tribunal Chowdhury on the 12 October 2023 in the following terms:
 - “1. *The application for permission is out of time. The decision was uploaded on 1st September 2023 and the application for permission was uploaded on 19th September 2023. The Appellant states he was unwell and unable to provide earlier instructions. There is no evidence of the Appellant’s ill health. However, given that the delay is not extensive and reference was made to the Appellant’s mental health during the hearing in the circumstances I extend time.*
 2. *The Appellant attended the hearing. This unfortunately is not reflected in the judge’s decision where at paragraph 16 she states there was no appearance by the Appellant. Importantly, the judge appears not to make any findings on the oral evidence she heard from the Appellant. It is arguable that this is a material error of law.*
 3. *For completeness I do not grant permission on the basis as stipulated in the grounds. There is no medical evidence attached to these grounds demonstrating he was unable to give evidence and no medical evidence appears to be uploaded separately on my HMCTS.*
 4. *Permission is granted on the grounds contained at paragraph 2 only.”*

Hearing

5. At the hearing before the Upper Tribunal, Mr Tan confirmed from the notes of the Presenting Officer that the Appellant did not, in fact, attend the hearing physically before the First-tier Tribunal. Consequently, he submitted that it was unclear why permission to appeal had been granted. Mr Tan helpfully indicated that on the CCD platform there was reference to an adjournment request having been made on 8 August 2023 by the Appellant's representatives in the form of a fitness to work note, but this application had been refused. The Appellant failed to appear at the hearing nor was any further adjournment request made on the day i.e. the 11 August 2023. Mr Tan submitted in the absence of any adjournment request the judge had effectively proceeded as best as she could in her circumstances and that the judge's findings were sustainable and unchallenged.

Findings and Reasons

6. Prior to the appeal being called on today I asked my clerk to communicate with the Appellant's representatives, who forwarded an email that they had sent to Field House on 17 November. They asserted in the email that they were not instructed to represent the Appellant at the hearing before the Upper Tribunal today, the 7 December 2023 and had sent the documents as a gesture of good will along with a request for an adjournment with an attached doctor's letter. On the Upper Tribunal CE file system I note that this correspondence had been rejected on the basis that the representatives or former representatives were asked to upload the documents to MyHMCTS, which in fact they had failed to do. I nevertheless took into consideration the documents that were sent.
7. There was no request for an adjournment but there is a letter from the Kapur Family Care, which is a primary care centre in Oldham dated 23 November 2023, which gives the Appellant's name and date of birth. It states that he is a registered patient with them but he is currently struggling with his mental health issues and suffers from depression, anxiety and stress and had commenced medication. There is no indication in this letter that the Appellant was unable to attend an appeal hearing or to give evidence.
8. [16] of the decision and reason of the First tier Tribunal Judge provides:
"16. At the hearing, there was no appearance from the appellant. The letter from Maya solicitors stated the appellant "wishes to represent himself at the forthcoming hearing on 11 August." I satisfied myself that the hearing notice had been sent to the appellant on 27 July 2023. As there was no explanation from the appellant for his nonappearance, I continued with the appeal (sic) heard submissions from the Home Office Presenting Officer."
9. It is now clear and has been confirmed from the notes of the Presenting Office who was in attendance that the Appellant was not at the hearing of the First-tier Tribunal. He did not give evidence and therefore the grant of permission was made on a wholly erroneous basis.
10. The grant of permission was, in any event, confined only to the procedural fairness aspect and not for any other reasons and therefore there is no challenge to the findings of fact of the First-tier Tribunal Judge.

Notice of Decision

11. I find no error of law in the decision and reasons of the First tier Tribunal Judge and accordingly uphold that decision.

Rebecca Chapman

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 January 2024