



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001053
First-tier Tribunal No:
PA/54535/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 13 May 2024

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

EN
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 29 April 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity, save that details of this decision and his identity can be disclosed to his mental health support workers.

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 (with the savings above). 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 Lucas dated 7 January 2024 in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 13 October 2022 was dismissed.
2. The Appellant is a national of Ghana, born on 15 May 2002, who claims to have left Ghana in 2012 and arrived in the United Kingdom on 6 September 2018,

claiming asylum the same day on the basis that he feared persecution on return following a hunting accident in Ghana in which one friend accidentally killed another and his claim includes traumatic events which followed, including his father being killed in Libya.

3. The Respondent refused the application the basis that the Appellant's claim did not engage the Refugee Convention, was vague and did not establish any risk on return to Ghana.
4. Judge Lucas dismissed the appeal in a decision dated 7 January 2024 having proceeded to hear it in the absence of the Appellant or a representative acting for him. The Judge was satisfied that the appropriate notice of hearing had been served and that no bundle or any other document had been submitted in support of the Appellant's appeal save for an appointment letter dated 11 April 2023 for a sleep appointment. The First-tier Tribunal concluded that the Appellant had failed to engage in the appeal process and had voluntarily absented himself from the hearing, such that there was no reason to adjourn it. These points are in substance repeated within the findings, together with a conclusion that the Appellant's stated fears were without merit, were vague and lacking in real detail; that the claim did not engage the Refugee Convention and even if it did, the fear was of non-state actors and the Appellant could relocate.

The appeal

5. The Appellant appeals on two grounds. First, that the hearing before the First-tier Tribunal was procedurally unfair because there was considerable doubt whether the legal representatives on record were still acting and therefore whether or not the Appellant was even aware of the hearing. Secondly, that the First-tier Tribunal failed to consider the Appellant's health as a new matter raised by him nor canvassed whether the Respondent consented to the same.
6. The Respondent accepts in this case that at least the first ground is made out, that there was procedural unfairness before the First-tier Tribunal such that the decision should be set aside and the appeal remitted to the First-tier Tribunal for a de novo hearing.

Findings and reasons

7. This appeal raises a significant concerns as to the conduct of the Appellant's legal representative and as to the handling of his appeal before the First-tier Tribunal more generally. It is necessary to set out some of the procedural history to explain these and to bear in mind throughout that there was evidence before the First-tier Tribunal that the Appellant was (and is) suffering from poor mental health.
8. The appeal was lodged on 21 October 2022 on three grounds and identified that there were new matters, primarily mental health issues but that there was also a victim of modern slavery issue going to the risk of harm which was under consideration by the SCA. The legal representative on record for the appeal was Richard Bartrum from the Migrant Law Partnership and according to the First-tier Tribunal records, there was no formal notification that they came off record at any point, although it was clear that the Appellant had made an application for permission to appeal in person.
9. The Appellant's contact details on record with the First-tier Tribunal included a home address and an email address, albeit the email address, which was his

preferred method of communication, was hearings@migrantlawpartnership.com a slightly different one to that given by his legal representative of admin@migrantlawpartnership.com but in any event, clearly an address associated with his legal representative and not the Appellant's personal email address.

10. The First-tier Tribunal sent a number case management directions in this appeal. These included one on 2 December 2022 requesting the Appellant to upload his skeleton argument by 9 January 2023; a reminder to do the same following non-compliance with the earlier directions dated 23 January 2023 for compliance by 6 February 2023; and directions for a written explanation for the continued failure to comply and notification of the appeal being progressed to a substantive hearing dated 17 March 2023.
11. A request was also sent on 17 March 2023 for any hearing requirements to be submitted by 22 March 2023, with follow up directions as to the hearing requirements sent on 13 April 2023. The non-compliance with both of these directions was noted in further directions sent on 17 May 2023 with a warning about the Tribunal proceeding to list the appeal and that it may not be able to accommodate any requirements made late.
12. It appears an application was made by the Appellant's legal representative on 13 April 2023 for an extension of time by reference to an email from the Appellant's mental health co-ordinator dated 6 February 2023, which set out concerns about the Appellant and his inability to answer questions during his asylum interview due to trauma and asking how she could best support him in the appeal process. It was expected that the Tribunal would be updated within 14 days. It was said that the attached e-mail was self-explanatory, but given that it was asking for what support was needed and directed to the legal representative, it is entirely unclear what was being sought from the First-tier Tribunal. In any event, the application was refused on the basis that the deadline had already passed for an update when it was considered on 17 May 2023 and nothing further had been heard.
13. On 29 August 2023, the Appellant's legal representative uploaded four documents to the First-tier Tribunal case management system, including a mental health appointment letter, a referral to CMHT dated March 2022, a CMHT letter dated November 2022 and a letter dated 31 May 2023 to the Appellant's solicitor from the Leaving and After Care Team in Essex County Council about the Appellant's mental health. There was a note on the case management system from the legal representative that said 'Admit documents I am in position of notwithstanding we are not representing'. The fuller application to admit the documents referred to above stated:

"Dear Judge, MLP will not be representing the appellant tomorrow. I lodged this appeal at the request of the appellant and Social Services the previous representative not having capacity to do so. I make no comment on credibility but confirm that I have carried out an analysis of the facts in light of state protection and internal flight. I was made aware of medical issues and actively sought medical advice and have carried out my own Assessment of whether they engage Art 3 ECHR. Others may differ in their analysis. I am uploading those documents now. I am sorry I can't put them in a bundle as I am writing this from my laptop attached to a local sim many thousands of miles away in a very very rural location in Asia where I am dealing with a family emergency. Richard

Bartram. The appellant, social worker and support worker have been told and emailed the notice of hearing."

14. The appeal came before First-tier Tribunal Judges Roots and O'Neill on 30 August 2023. The Appellant attended the hearing with a support worker, but his representative did not attend and had not made any formal application for an adjournment. It was accepted that the Appellant had only become aware of the hearing the day before and that no bundles or witness statements had been lodged. It was considered to be unclear from the wording of the message from the legal representative the day before whether they continued to represent the Appellant or not. Further, it was noted that Article 3 health grounds had been raised as a new matter such that consent would be needed from the Respondent for the First-tier Tribunal to consider this within the appeal.
15. The hearing on 30 August 2023 was adjourned as it would be unfair to the Appellant and not in the interests of justice to proceed with the hearing. Directions were issued on 12 September 2023 as follows:
 - (1) *List for a case management hearing, by CVP, on the first available date seven weeks after date of issue of these directions.*
 - (2) *The tribunal proceeds on the basis that the appellant is still instructing Mr Bartram of Migrant Law Partnership but the tribunal must be informed immediately if this is not the case. The representative is reminded of his obligations, to a vulnerable appellant, if he continues to act for the appellant, particularly in respect of representation at hearings.*
 - (3) *Article 3 (mental health) has not previously been considered by the respondent and as such is a 'new matter'; therefore the appellant must within 4 weeks of the date of these directions:*
 - (a) *confirm whether he wishes to raise his mental health as a ground for appeal in his protection claim and*
 - (b) *provide a brief summary of his Article 3 grounds and attach any evidence in support of that ground.*
 - (4) *The Respondent must respond within 2 weeks, confirming whether consent is given to the Article 3 (mental health) matter being considered within these proceedings or giving written reasons why consent is refused.*
16. Further directions were sent on 8 November 2023 directing the Appellant to serve a full bundle of papers within 28 days and to advise the Tribunal whether he is still represented and if so, by whom. The appeal was then listed on 11 December 2023 for hearing on 18 December 2023.
17. There is no trace on the First-tier Tribunal's case management system of any compliance with any of the directions sent, standard or bespoke following events in this appeal by the Appellant's legal representative. Given the Appellant's stated preferred method of communication being email and the address being that of his legal representative, there is also no evidence that the Appellant was served directly with any of the directions or notice of hearing either, nor in the circumstances, that he was likely to have had any knowledge of them from his legal representative (other than the hearing on 30 August 2023 that he was informed about only the day before) given the lack of almost any action at all by them in relation to this appeal.

18. There is also no reason that I can identify as to why the directions issued on 12 September 2023 were not followed for this appeal to be listed for a case management hearing seven weeks later; although it would be reasonable to infer the Respondent's failure to comply with the last direction was due to the lack of response on behalf of the Appellant as to whether he was pursuing a new matter. A case management hearing may have identified the matters listed above as concerns in this appeal and/or for steps to be taken to ensure contact with the Appellant directly prior to the substantive hearing.
19. The decision of First-tier Tribunal Judge Lucas does not expressly consider any of the above history, nor the Appellant's accepted vulnerability for mental health reasons and simply concludes that he has failed to engage with his own appeal and had been served with the notice of hearing. On even a bare consideration of the above, serious concerns should have been apparent as to whether the Appellant was aware of any of these matters or the listing of his hearing; and as to the professional conduct of his legal representatives who remained on record (despite failing to confirm whether they were still instructed even when directed to do so). The failure to have regard to any of these matters and to refuse to adjourn the hearing was procedurally unfair to a vulnerable Appellant resulting in an error of law. In all of the circumstances, it was unarguably in the interests of justice for the hearing to be adjourned to allow the Appellant the opportunity to properly participate in it. The decision of the First-tier Tribunal must be set aside and the appeal remitted to the First-tier Tribunal for a de novo hearing before another Judge.
20. At the hearing, I gave oral directions to the Respondent to confirm within 14 days whether consent was given to consideration of Article 3 medical grounds (mental health) as a new matter within this appeal. This should be confirmed to both the First-tier Tribunal and the Upper Tribunal. It is anticipated that further case management directions will be needed for the de novo hearing and that measures may need to be in place for the Appellant as a vulnerable witness.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

The appeal is remitted to the First-tier Tribunal for a de novo hearing before any Judge except Judge Lucas.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

6th May 2024