IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004545

First-tier Tribunal No: PA/01038/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 9th of January 2025

Before

UPPER TRIBUNAL JUDGE O'BRIEN
UPPER TRIBUNAL JUDGE DAYKIN

Between

TT
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms P Yong of Counsel, instructed by TMF Immigration Lawyers
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on 12 December 2024

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 against the decision of First-tier Tribunal Judge Hussain ('the judge'), promulgated on 16 July 2024, dismissing her appeal against the

respondent's refusal of her protection and human rights claims. Permission was given on renewal to the Upper Tribunal by Upper Tribunal Judge Neville on the grounds that it appeared arguable that Judge Hussain had failed to explore the reasons for the appellant's absence before deciding to proceed in her absence.

2. We heard submissions from both Ms Yong and Mr Wain. Ms Yong relied on a skeleton argument provided by her instructing solicitors. No rule 24 response had been submitted; however, Mr Wain confirmed that the respondent relied on the judge's decision as being lawful and absent of error on its face.

3. In short, the argument on behalf of the appellant is that the judge failed to consider both Rule 28 of the First-tier Tribunal Procedure Rules 2013 before deciding to proceed in the appellant's absence and, in any event, failed to take into account Rule 2 and the overriding objective. Alternatively, the judge had failed to explain how, if he had, taken those Rules into account. The respondent argued that the judge had been entitled in the circumstances as recorded in the decision to decide the matter on the papers or in the absence of the appellant.

The Law

4. Rule 2 of the First-tier Tribunal Procedure Rules 2013 provides in particular that:

> "(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
> (2) Dealing with the case fairly and justly includes:
> (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;
> (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
> (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
> (d) using any special expertise of the Tribunal effectively; and
> (e) avoiding delay, so far as compatible with proper consideration of the issues."

5. Rule 28 ('Hearing in a party's absence.) provides:

> "If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—
> (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
> (b) considers that it is in the interests of justice to proceed with the hearing."

6. Also of relevance, in our judgment, is Rule 25 ('Consideration of decision with or without a hearing') the material provisions of which are:

> "(1) The Tribunal must hold a hearing before making a decision which disposes of proceedings except where—
> (a) each party has consented to, or has not objected to, the matter being decided without a hearing;
> (b) the appellant has not consented to the appeal being determined without a hearing but the Lord Chancellor has refused to issue a certificate of fee satisfaction for the fee payable for a hearing;

(c) the appellant is outside the United Kingdom and does not have a representative who has an address for service in the United Kingdom;
(d) it is impracticable to give the appellant notice of the hearing;
(e) a party has failed to comply with a provision of these Rules, a practice direction or a direction and the Tribunal is satisfied that in all the circumstances, including the extent of the failure and any reasons for it, it is appropriate to determine the appeal without a hearing;
(f) the appeal is one to which rule 16(2) or 18(2) applies; or
(g) subject to paragraph (2), the Tribunal considers that it can justly determine the matter without a hearing.

(2) Where paragraph (1)(g) applies, the Tribunal must not make the decision without a hearing without first giving the parties notice of its intention to do so, and an opportunity to make written representations as to whether there should be a hearing."

Conclusions

7. The background to this case is that the appellant, until relatively recently, was acting in person. Certainly, she was acting in person at all material times. She corresponded on 7 April 2024 to the effect that she had been dispersed to Colchester and would not be able to afford to travel to Hatton Cross. She requested a hearing at a closer location. That application for transfer was granted and the matter was listed instead at Taylor House.

8. Incidentally, we explained to the appellant at the hearing that, while she might have wanted a hearing centre even closer to Colchester, there is no hearing centre in this Chamber of the First-tier Tribunal closer to Colchester than Taylor House.

9. The appellant says that she replied to the notice of hearing at Taylor House shortly afterwards on or around 8 May 2024, explaining that she still would not be able to afford to travel to Taylor House and that she was unable to properly prepare her appeal. It is noted in Judge Neville's grant of permission that there is no sign in the court file of receipt of such an email. The appellant clarified to us that it was a letter that she sent, that she had sent it special delivery but that she had lost the receipt. We need not, for the purposes of this judgment, make a finding as to whether that was in fact true because we need only look to what Judge Hussain gives in his decision for his rational for proceeding without the appellant's presence on 31 May 2024. The entirety of his rationale is to be found at paragraph 23:

> "The appellant was not represented at the hearing, either in person or through a representative. In the circumstances, I resolved to determine this appeal on the papers before me."

10. We recognise that later on in his reasoning for dismissing the appeal, the judge says at paragraph 28 that the appellant had not taken part in the hearing and had not served any response to the appellant's case against her and further, at paragraph 29, said:

> "The appellant had the opportunity of taking part in the proceedings to prove that she is a refugee. She has not done so."

11. However, neither of these sentences are to be found as part of the rationale for the judge's deciding to proceed in the appellant's absence. Rather, they are part of the judge's consideration of the substantive issues in the appeal.

12. When deciding whether to proceed in the appellant's absence, the judge undertook no consideration of whether she had in fact been given notice of the hearing or reasonable steps taken so to do (albeit that in this case it is accepted that she was given notice) or, more importantly, whether it was in the interests of justice to proceed with the hearing.

13. As it is, the judge purported to decide not only to hear the matter in the appellant's absence but also without a hearing at all. However, the judge failed to consider which of the criteria in rule 25(1) applied. None but the criteria in (e) and (g) are potentially applicable in this case. Regarding the latter, the parties had not been given any notice of the Tribunal's intention to decide the matter without a hearing. As for rule 25 (1)(e), the judge gave no consideration to whether it was appropriate to determine the appeal without a hearing.

14. In the circumstances, we are satisfied that the judge acted procedurally unfairly and as such erred in law. We were not urged to find that any such error was immaterial, and would not have done so in any event. Had the judge acted fairly and in accordance with the overriding objective, he would have been aware at the very least of the appellant's recent house move and her funding problems. We cannot be satisfied that any reasonable Judge would have decided in those circumstances to proceed in the appellant's absence and without a hearing.

15. The appellant's case has yet to be given any proper consideration in the First-tier Tribunal. Consequently, we remit the matter to be heard afresh by another judge with no findings of fact preserved.

Notice of decision

1. The judge's decision involved the making of an error of law and is set aside.

2. The appeal is remitted to the First-tier Tribunal to be heard by a different judge with no findings of fact preserved.

Sean O'Brien

Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 December 2024