



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/06245/2013

**THE IMMIGRATION ACTS**

**Heard at Laganside Courts, Belfast**

**Determination  
Promulgated**

**On 30 October 2014**

**On 7 November 2014**

**Before**

**The President, The Hon. Mr Justice McCloskey**

**Between**

**IKE ERNEST EMEZINA**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

Appellant: Mr E Dornan (of Counsel) instructed by McQuoid Solicitors  
Respondent: Mr Mills, Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. This appeal has its origins in a decision made on behalf of the Secretary of State for the Home Department (the "*Secretary of State*"), dated 17 June 2013, whereby the Appellant's claims for asylum and humanitarian protection were refused. The ensuing appeal to the First-tier Tribunal (the "*FtT*") was dismissed.
2. At the conclusion of the hearing, I gave judgment allowing the appeal, for the following reasons, in summary.
3. As recorded in [12] of the FtT's determination, an application was made on behalf of the Appellant, one week in advance of the scheduled hearing

date, for an adjournment. The determination records that the purpose of the adjournment requested was:

*"... to obtain a specialist medical report dealing with an injury to [the Appellant's] left ear which he said was sustained as a result of physical abuse relating to his claim."*

The Judge continued, in [13]:

*"I was informed that the additional evidence was directed to addressing adverse credibility findings and his claim for discretionary leave based on his medical condition. After hearing submissions as a preliminary issue, I declined to adjourn the appeal on the basis of the time that had elapsed and that I was not persuaded, given the medical evidence already available, that further specialist medical evidence was going to add materially to what was before the Tribunal."*

4. The hearing proceeded. In [42], the Judge recorded:

*"In evidence he said his ear problems occurred after being struck by a gun to his left ear."*

This was one of the factual ingredients of the Appellant's claim for asylum *ab initio* (see, for example, question/answer number 80 in the asylum interview) which was disbelieved by the Secretary of State on the grounds that it was not credible. The Judge continued:

*"In cross examination he said he had no ear problems prior to this incident. When confronted with Dr Irwin's report of 31 July 2012 in which he is recorded as saying he had been deaf since childhood, he said this was a misunderstanding by the doctor. I do not find that credible."*

The following omnibus conclusion is contained in [44]:

*"In summary, I find the Appellant's claim is not, at its core, a reliable one. His propensity to be untruthful on issues which are verifiably untrue casts serious doubt on his overall story."*

5. The relevance of the further medical evidence which the Appellant's legal representatives wished to obtain, and which formed the basis of the adjournment application, was not confined solely to the sustainability of the Appellant's asylum claim. It also had a bearing on his claim under Article 8 ECHR. Initially, the Appellant's application for permission to appeal to this Tribunal was refused. When the renewed application was made, the further medical evidence had been obtained. Its author is a Consultant Otolaryngologist and the following extract is provided in the renewed permission grounds:

*"It would be unusual for cholesteatoma to develop as a result of an assault and the vast majority of these arise spontaneously .....*

*[However] it is entirely possible that his symptoms from his underlying cholesteatoma could have been worsened by an alleged assault."*

The Consultant further opined that the Appellant is:

*".... at imminent risk of losing his hearing and balance function in the left inner ear without urgent surgical intervention. I feel that it is very likely that if he is deported that the delay in obtaining surgery in his left ear in his home country will result in progressing of his cholesteatoma to the point where he will lose hearing and balance function in this ear."*

6. In refusing the adjournment application, the Judge did not refer to any of the relevant provisions of the Asylum and Immigration Tribunal (Procedure) Rules 2005 **or** the governing legal principles. All of this is rehearsed in Nwaigwe [2014] UKUT 00418 (IAC), at [4] – [8]. As a result, the Judge failed to apply the correct test, namely whether the refusal of the adjournment application would deprive the Appellant of his right to a fair hearing. Furthermore, the Judge assumed an expertise of a medical nature to which he could not properly lay claim. In granting permission to appeal, Upper Tribunal Judge Grubb stated:

*"The medical evidence had arguable relevance to the Appellant's credibility and also to his Article 8 claim. Even if that evidence might not have been compelling, it cannot be said with confidence that the Judge would have made the same findings and decision."*

I consider that the grant of permission to appeal has been vindicated. Without reference to the new medical evidence, which I disregard in this context, I consider that the adjournment refusal infringed the Appellant's right to a fair hearing, which is inalienable and indefeasible.

7. I conclude that there is also merit in the free standing ground of appeal which complains that whereas the Appellant's human rights claim was advanced under Article 8 ECHR, the Judge erred in law by determining it by reference to Article 3 ECHR and the related principles and jurisprudence. The leading authority, which the Judge failed to consider, is Bensaid – v – United Kingdom [2001] 33 EHRR 205.
8. Finally, upon the rehearing of this appeal, one may reasonably predict that, in addition to the above, there will be a reasonably intense focus on the Judge's findings in [41] and [42] of the determination.

## **DECISION AND DIRECTIONS**

9. I decide and direct as follows:

- (a) The decision of the FtT is set aside.
- (b) I remit the case to a differently constituted FtT for rehearing and remaking.
- (c) The FtT should conduct a CMR hearing before 20 December 2014.
- (d) The target relisting is the first available date thereafter.

*Seamus McCloskey.*

THE HON. MR JUSTICE MCCLOSKEY  
PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER

Date: 30 October 2014