



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03819/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 26 September 2017**

**Decision & Reasons
Promulgated
On 17 October 2017**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

P F

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Robinson, Counsel instructed by J D Spicer Zeb Solicitors

For the Respondent: Mr P Armstrong, Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order because this is a protection case and there is invariably a risk in cases of this kind that publicity will itself create a risk.
2. This is an appeal by a citizen of Iran against the decision of the First-tier Tribunal dismissing his appeal against the decision of the Secretary of State that he is not entitled to international protection.

3. There is really only one point in this appeal. It is that the appellant attended the hearing of the First-tier Tribunal expecting to be represented by Counsel and Counsel did not appear. We know that Counsel was expected and we know that Counsel did not appear because there was a letter to that effect sent by facsimile to the hearing and brought to the attention of the judge. The letter from solicitors says that the solicitors notified Counsel's clerk of the new hearing date and continues "unfortunately due to an admin error on their side it was not put in the diary and therefore due to no fault of the appellant or ourselves we were not able to get Counsel to the Tribunal today".
4. It would be remarkable if a solicitor made a claim of that kind if that claim turned out to be less than entirely truthful and the judge would be very wrong not to give a lot of weight to that unless there was a very good reason to doubt it. There was no such reason in this case but the position is reinforced because I have a statement, sent after the hearing in the First-tier Tribunal, from Counsel's Chambers and from the clerk involved admitting to a mistake. Anyone with any experience of the operation of the clerks' rooms knows that mistakes of this kind are extremely rare but they do happen and when they do a lay client could be left in a very bad position. I have to say that I find the judge was wrong not to have adjourned the appeal on the information before him.
5. With the benefit of hindsight in the additional information before me I had no hesitation in saying that the hearing was unfair. The unfairness is that a person who had a proper reason to expect to be represented was not represented. In those circumstances there is little point considering the Decision and Reasons. Both Mr Armstrong before me and the Reply to the grounds of appeal settled by Mr Tarlow comment on the quality of the decision. That is really missing the point. The grounds of appeal here do not complain that the decision is wrong but they complain that the hearing should not have gone ahead and I find that unanswerable. I acknowledge that it was the second time there had been an adjournment application. I acknowledge that there had been an application for an adjournment that was refused before the hearing. None of those things have any relevance at all on the basic core fact which is that this appellant turned up expecting to be represented and was not because of somebody's else's mistake.
6. I have no hesitation in saying the First-tier Tribunal erred in law given that this case is going to turn, I suspect, on credibility and as there has not been a proper hearing it clearly must go back to the First-tier Tribunal to be decided again.

Notice of Decision

7. I therefore find the First-tier Tribunal erred. I set aside the decision of the First-tier Tribunal and I direct that the case be heard again in the First-tier Tribunal.

Signed

A handwritten signature in black ink, appearing to read "Jonathan Perkins". The signature is written in a cursive style with a prominent initial 'J' and 'P'. A horizontal line is drawn underneath the signature.

Jonathan Perkins, Upper Tribunal Judge

Dated: 16 October 2017