



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/06725/2017

THE IMMIGRATION ACTS

Heard at Field House
On 10 May 2018

Decision & Reasons Promulgated
On 15 May 2018

Before

Deputy Upper Tribunal Judge MANUELL

Between

MR YAW DAMOA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Akinbolu, Counsel
(instructed by M & K Solicitors)

For the Respondent: Mr C Avery, Home Office Presenting Officer

DETERMINATION AND REASONS

1. Limited permission to appeal was granted by First-tier Tribunal Judge Chohan on 9 March 2018 against the dismissal of the Appellant's EEA residence card revocation appeal by First-tier Tribunal Judge Baldwin in a decision and reasons promulgated on 4 September 2017. The Appellant is a national of Ghana, born

on 15 September 1988. He relied on his relationship to his wife by proxy marriage. He was in the United Kingdom as an overstayer until he was granted a residence card in December 2013. Judge Baldwin reached extensive adverse credibility findings.

2. The sole ground on which permission to appeal was granted was to enable further consideration of the Appellant's assertion that there had been procedural unfairness at the appeal hearing. It was contended that the judge had discussed the appeal with the Home Office Presenting Officer in the absence of the Appellant's representative, before the evidence commenced.
3. The Respondent had filed a rule 24 notice dated 24 April 2018 opposing the appeal.
4. Ms Akinbola for the Appellant (who relied on her skeleton argument) sought to renew the permission to appeal application to include the grounds on which permission to appeal had been refused in the First-tier Tribunal. The tribunal declined to permit an extension of the grounds. There had been ample time to renew the application to the Upper Tribunal on the refused grounds if there had been disagreement with the decision. None of the grounds of application had been overlooked by the First-tier Tribunal. No good reason for the delay had been provided.
5. Ms Akinbola submitted that the evidence from the Appellant showed a clear and justified perception of judicial bias. This was of particular importance given the issues which the judge had to decide, i.e., the substance of the EEA marriage, and the fact that the judge had declined an adjournment. The Appellant had made a witness statement, as had his solicitor (although not his representative at the hearing). There had been a protest made to the First-tier Tribunal immediately after the hearing. There were obvious failings across the board. The appeal should be allowed and reheard before another judge.
6. Mr Avery relied on the rule 24 notice. There was no substance in any of the allegations or complaints. The evidence showed that the discussion between the judge, the Appellant and the Home Office Presenting Officer had been confined to whether or not the Appellant (who plainly had a good command of English) needed an interpreter at all. There had been nothing more than a simple and open discussion, in which the Appellant had participated. It had been open to the judge to refuse to adjourn for the reasons he gave and that had shown no reasonable basis for a perception of

bias. The permission to appeal application was only made to avoid the outcome of the appeal.

7. Ms Akinbolu addressed the tribunal briefly in reply, reiterating her earlier points.
8. The tribunal reserved its decision which now follows. Normally when an accusation touching on the conduct of a judge in a hearing is made, the judge's observations should be sought prior to any adjudication. For reasons which are unclear, this was not done in the present appeal. Had the tribunal considered that such observations were needed, it would have adjourned the present hearing for that purpose. But the tribunal has concluded that there is nothing in any of the allegations of perceived bias and that there was no need for any adjournment to obtain the First-tier Tribunal's judge's comments.
9. The tribunal accepts Mr Avery's submissions. The tribunal should be slow to infer elementary procedural fairness error by an experienced First-tier Tribunal judge, especially in the Immigration and Asylum Chamber where every aspect of an appeal hearing and subsequent determination is picked over in the hope of finding grounds for an appeal, however tenuous and lacking in merit. The Appellant's account of the hearing is selective and must be set against the judge's decision and reasons, which included his consideration of the post hearing submissions.
10. The discussion as to the need for an interpreter at public expense which the judge initiated was to assist the smooth running of the hearing which had not yet commenced. The Appellant's witness statement dated 16 August 2017, running to 141 paragraphs, as submitted to the judge, was in English. There was no certificate to the effect that the witness statement had been translated into Twi before it had been signed. The Appellant had previously been interviewed by an Immigration Officer in English without objection.
11. It is notable that the Appellant's witness statement dated 15 September 2017 as submitted with the permission to appeal application was again in English. As before, there is no certificate to the effect that the witness statement had been translated into Twi before it had been signed. The Appellant does not deny that he speaks English nor that he had spoken to his solicitor in English at the First-tier Tribunal hearing. The natural inference

is that the Appellant speaks English. Indeed, his witness statements demonstrate an extensive vocabulary.

12. There was thus no realistic possibility of private discussion between the judge and the Home Office Presenting Officer, as the Appellant was present in the hearing room throughout and had full opportunity to see, hear and understand what was said. The representative's absence was self-evidently brief and liable to return at any moment. There was plainly no discussion of the merits or otherwise of the appeal during his representative's temporary absence, merely checking that all necessary documents were available to all parties and thus enabling the hearing to proceed without delay. The Appellant's witness statement makes no averment to the contrary; rather it is vague: see [24] of the witness statement where he says his impression was of a complaint of late service of the Appellant's documents.
13. Moreover, the Appellant had the further opportunity to raise any matters of concern about the judge with his representative who returned before the hearing commenced. The hearing proceeded normally and full submissions were made on the Appellant's behalf and were fully considered. Additional material submitted on the Appellant's behalf after the hearing was also fully considered.
14. There was in short nothing of any substance about the appeal hearing which could have led a fair-minded observer, having considered the facts noted above, to conclude that there was a real possibility that the tribunal was biased: see Alubankudi [2015] UKUT 542 (IAC) for a detailed discussion of the principles.
15. Hence the tribunal finds that there was no procedural unfairness (perceived bias or otherwise) and no error of law in the decision and reasons. The onwards appeal is dismissed.

DECISION

The appeal to the Upper Tribunal is dismissed.

The original decision stands unchanged.

Signed

Dated 10 May 2018

Deputy Upper Tribunal Judge Manuell