



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

Appeal Number: HU/06945/2018

THE IMMIGRATION ACTS

Heard at Manchester CJC

Decision & Reasons

On 21 January 2019

Promulgated

On 12 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MUHAMMED [A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a Nigerian national who entered the United Kingdom as a minor with his mother in June 2006, aged 14 years of age. On August 1, 2012 he claimed asylum but this was refused on August 14, 2012. He appealed that decision and his appeal ultimately was allowed on human rights grounds (Article 8 family life) by the Tribunal on January 31, 2013 and he was given discretionary leave to remain until October 17, 2015.
2. On September 24, 2015 the appellant applied for further leave to remain and this was refused by the respondent on February 26, 2018.

3. The appellant appealed this decision on March 16, 2018 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and his appeal came before Judge of the First-tier Tribunal Hudson on September 10, 2018 and in a decision promulgated on September 14, 2018 the Judge dismissed his appeal.
4. Grounds of appeal were lodged by the appellant with the assistance of his mental care co-ordinator on September 28, 2018. Within those grounds it was stated that the appellant had been sectioned and detained under section 2 of the Mental Health Act 1983 on September 4, 2018. At the date of hearing on September 10, 2018 the appellant was therefore unable to attend or provide instructions to his legal representatives as he was an in-patient at Stepping Hill Hospital. On September 28, 2018 the appellant and his mental care co-ordinator attended at his home address and discovered that his appeal had been dealt with in his absence.
5. In granting permission to appeal Judge of the First-tier Tribunal Smith extended time to file the appeal due to the fact the appellant was in a secure psychiatric hospital at the date when his appeal was heard and found it was arguable there had been procedural unfairness and in particular that the Judge had attached significance to the fact the appellant had not attended the hearing and had concluded the appellant was in reasonable health.
6. No anonymity order is made.

PRELIMINARY ISSUES

7. It was apparent from the court file that on August 23, 2018 the appellants former representatives had written to the Tribunal and that letter had been received the same day. According to that letter the appellant was feeling unwell and was unable to attend at his representatives to provide instructions. They confirmed that they would not be attending his final hearing.
8. In proceeding on September 10, 2018, the Judge noted that the appellant had not attended and at paragraph 16 recorded that the appellant was "currently in reasonable health and compliant with his medication".
9. It is apparent from the current appeal grounds that the appellant was far from being in reasonable health in that he had been sectioned under the Mental Health Act.
10. Mr Tan, on behalf of the respondent, accepted that there had been a procedural unfairness with the Judge unwittingly proceeding in the appellant's absence. The appellant was entitled to attend the hearing and was entitled to give oral evidence and the fact he was unable to because he was detained under the Mental Health Act meant there had been a procedural unfairness.

11. I briefly considered whether to retain jurisdiction in this matter but concluded that this case should be remitted back to the First-tier Tribunal under Section 12(1) of the Tribunals, Courts and Enforcement Act 2007 as a full hearing including oral evidence will need to take place. Mr Tan did not disagree with this course of action.
12. The case should be listed before a Judge other than Judge of the First-tier Tribunal A R Hudson.

Notice of Decision

There is an error in law. I set aside the original decision and remit the matter back to the First-tier Tribunal under Section 12(1) of the Tribunals, Courts and Enforcement Act 2007.

Signed

Date 07/02/2019

A handwritten signature in black ink, appearing to read 'SP Alis', with a horizontal line underneath.

Deputy Upper Tribunal Judge Alis