



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: PA/00658/2019

THE IMMIGRATION ACTS

Heard at: Field House
On 31 May 2019

Decision & Reasons promulgated
On 10 June 2019

Before

Upper Tribunal Judge Gill

Between

A K
(ANONYMITY ORDER MADE)

Appellant

And

The Secretary of State for the Home Department

Respondent

Anonymity

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. No report of these proceedings shall directly or indirectly identify him. This direction applies to both the appellant and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings.

I make this order because this is a protection claim.

The parties at liberty to apply to discharge this order, with reasons.

Representation:

For the appellant: Mr L Lourdes, of Counsel, instructed by IP Solicitors.

For the respondent: Mr S Walker, Senior Presenting Officer.

Decision and Directions

1. The appellant appeals against the decision of Judge of the First-tier Tribunal Hanbury who, following a hearing on 22 February 2019, dismissed his appeal against the respondent's decision of 17 December 2018 to refuse his asylum and humanitarian protection claims of 1 August 2017.
2. The sole issue is whether the judge's refusal to adjourn the hearing has led to the appellant having been deprived of a fair hearing.
3. The appellant was not present at the hearing before the judge. His representative, Mr I Pannawala, requested an adjournment on the basis that the appellant had suffered from an asthma attack and was unable to attend the hearing. The judge informed Mr Pannawala that he would require documentary evidence in support of the application. The case was then stood down.
4. At about 12:55 hours, Mr Pannawala submitted a faxed document which recorded that, at 7:03 hours that morning, the appellant had attended the A&E department of Whipps Cross Hospital, Barts Health NHS Trust. He was discharged at 11:07 hours with *"no wheezes or obstructions, a clear chest"*. No follow-up treatment was given but he was given *"verbal advice"*. There was some reference to *"TTO PRED 40 mgs OD for four more days"*.
5. The judge noted that the document did not suggest that the appellant was unfit to attend the Tribunal. The judge considered that there was a *"lack of any proper medical reason for adjourning the appeal"* (para 7). He noted that the notice of hearing dated 8 February 2019 informed the appellant that the appeal would be heard in his absence if he failed to attend the hearing without a satisfactory explanation for his absence. He took into account the overriding objective and the delay and cost of adjourning the hearing. He decided to refuse the adjournment request.
6. The appellant's application to the First-tier Tribunal for permission to appeal was refused. His application to the Upper Tribunal was granted by Upper Tribunal Judge Dawson who said, inter alia, that *"it was arguable that the judge erred by not making further enquiries to see if the medication itself might be a sufficient indicator that the appellant was suffering from a condition which might well have inhibited him from attending the hearing of his appeal"*.
7. Following the grant of permission, the appellant's representatives (unfortunately) did not submit evidence concerning the medication that the appellant was given at Whipps Cross hospital; in particular, whether the reference to "PRED 40 mgs" was a reference to the steroid Prednisolone and the significance of a dose of 40 mgs.
8. Prior to the commencement of the hearing before me, Mr Walker gave Mr Lourdes a handwritten note of some information that was returned when he *"Googled"* the name of the medication and the dose of 40 mgs. This stated that Prednisolone is a steroid and that 40 mgs is a high dose which produces psychological side effects which include irritability, agitation, euphoria or depression.

9. Mr Lourdes relied upon Mr Walker's handwritten note. In my view, Mr Walker's handwritten note constitutes evidence by Mr Walker of the information he obtained from his own research. It amounted to Mr Walker giving evidence at the hearing which, as representative, he is precluded from giving. On that basis, I rejected Mr Walker's handwritten note. Furthermore, there was no indication of any source.
10. I further reject any suggestion that the judge was under any obligation to conduct his own enquiries about the medication, especially given that the appellant was represented at the hearing before him.
11. At the invitation of Mr Lourdes, I heard oral evidence from the appellant. He said he had an asthma attack on the morning of the hearing and that he attended the A&E Department at Whipps Cross Hospital. He had blood tests and also had his blood pressure taken. He was given treatment by nebuliser and 40mgs of the steroid Prednisolone, i.e. 8 tablets. He only takes Prednisolone when he has an acute asthma attack. Normally, he uses two types of inhaler to control his asthma. The treatment that he was given at Whipps Cross Hospital made him drowsy. He could not concentrate. After discharge from Whipps Cross Hospital, he had to take 40 mgs of Prednisolone for four more days. This is a high dose. He could not travel to the hearing centre after being discharged because he was feeling drowsy and sick with nausea.
12. I accept the appellant's evidence. I am satisfied that, upon being discharged from Whipps Cross Hospital on 22 February 2019, he was in no fit condition to travel to the hearing centre, give evidence and have his evidence tested under cross-examination.
13. I am therefore satisfied that the judge's failure to adjourn the hearing has deprived the appellant of a fair hearing. I am satisfied that para 7.2(a) of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal applies.
14. I therefore set aside the judge's decision and remit this appeal to the First-tier Tribunal for a hearing on the merits on all issues by a judge other than Judge Hanbury.

Notice of Decision

The decision of Judge of the First-tier Tribunal Hanbury involved the making of an error of law such that the decision is set aside. The appellant's appeal against the respondent's decision is remitted to the First-tier Tribunal for a hearing on the merits on all issues by a judge other than Judge Hanbury.



Signed
Upper Tribunal Judge Gill

Date: 3 June 2019