



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number PA/06758/2019 (V)**

THE IMMIGRATION ACTS

**Heard at George House via Skype for
Business
On Monday 11 November 2020**

**Decision & Reasons
Promulgated
On Monday 16 November
2020**

Before

UT JUDGE MACLEMAN

Between

M S

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Dalziel, of Loughran & Co, Solicitors

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. FtT Judge Farrelly dismissed the appellant's appeal by a decision promulgated on 8 October 2019.
2. The appellant sought permission to appeal to the UT on grounds of (1) failure to adjourn the hearing when his representative withdrew; (2) finding credibility to be damaged by non-disclosure at interview that the appellant used a false nationality in Germany; and (3) finding credibility to

be damaged by failure to claim in other countries, without taking account of the appellant's explanation.

3. On 6 June 2020, FtT Judge Parkes granted permission, not restricting the grounds, but observing that while the decision not to adjourn was not itself an [arguable] error of law, the judge did not appear to have given the appellant the opportunity to make submissions, in particular on the credibility issues which were live at the hearing.
4. I conducted the hearing on 11 November from George House, Edinburgh. Representatives attended remotely. No members of the public attended, either in person or remotely. The technology enabled an effective hearing.
5. Mr Dalziel said at the outset that the appellant had recently advised that when his representative withdrew the judge asked if he wished to continue; he did not know whether to do so, but was assured by the judge that he could; and that he acted on that information. The judge also asked him at the end of the hearing if he had anything to add. (When making his submission, Mr Diwnycz said this was confirmed by the record kept by his colleague in the FtT.)
6. That honest disclosure is to the credit of the appellant.
7. Mr Dalziel submitted that notwithstanding that disclosure, ground 1 showed unfairness of procedure. The appellant had told the judge he did not know whether to proceed, and so was obviously confused, and major credibility matters were in issue. The appellant had been prejudiced by being unable to present a better case, and to address the credibility points taken against him. An experienced representative would have dealt in submissions with the matters which emerged from cross-examination. The judge had taken the appellant's case from the skeleton argument before him, but that was not the same as final oral submissions, based on what happened at the hearing. The skeleton argument did not mention the compendious bundles of background evidence and of case law which had been before the FtT. None of the 3 bundles included a key passages index. The provision of specific references would have been another aspect of final submissions.
8. I find that ground 1 discloses no procedural unfairness.
9. An appellant whose representative withdraws, either at the hearing or at any other stage, is not automatically entitled to an adjournment.
10. An appellant should sometimes be asked if he would prefer an adjournment, but each case turns on its own circumstances.
11. It would be an error not to give a party the opportunity to make final submissions.
12. The decision should have explicitly recorded that the appellant was given the chance to ask for an adjournment, and the chance to make final

submissions. It was those omissions from the record in the decision which led to the grant of permission. Now that it is clear from the appellant's recollections and from the respondent's record that those opportunities were given, ground 1 has no force.

13. Mr Dalziel valiantly made the best of what was left of ground 1, but to no avail. He sought to show that the appellant lost the chance to make a better case, but that was abstract. He has had new representatives for some time, but has not specified anything which might have been argued to the FtT. It does not appear that he had any better a case to make, if there had been an adjournment.
14. Ground 2 is only an assertion that the judge gave too much weight to not telling the truth about his claim in Germany. Ground 3 is only an assertion that the judge gave too much weight to failure to claim, or to persist in claims, elsewhere. Those were matters for the judge, within reason; and his weighing of them plainly was within reason.
15. The decision of the First-tier Tribunal shall stand.
16. The FtT made an anonymity direction. Parties did not address that matter in the UT. Anonymity is maintained.



12 November 2020
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email.