



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

Appeal Number: PA/01131/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1<sup>st</sup> December 2017**

**Decision & Reasons  
Promulgated  
On 20<sup>th</sup> December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

**Between**

**MR LAWRENCE THOMPSON  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr I Chukwudolue of Moorehouse Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Liberia whose date of birth is recorded as 13<sup>th</sup> June 1974. He appealed against the decision of the Secretary of State made on 17<sup>th</sup> January 2017 refusing his application for international protection.

2. There was a long history behind this Appellant. He originally arrived in the United Kingdom on 12<sup>th</sup> July 2004, claimed asylum, it was refused and his appeal was refused on 7<sup>th</sup> January 2005. He made fresh submissions. They were received on 10<sup>th</sup> November 2012 and refused with right of appeal. Further submissions were made in February 2014 and refused without a right of appeal.
3. The current matter relates to submissions received by the Secretary of State on 13<sup>th</sup> November 2015. They were accepted as a fresh claim and resulted in the decision, the subject matter of this appeal.
4. The appeal at first instance was listed at Taylor House and the matter came before Judge of the First-tier Tribunal Paul on 15<sup>th</sup> March 2017 when the Appellant did not attend. The Appellant's solicitors had written to the Tribunal requesting an adjournment on the basis that the Appellant was unable to attend their offices because of ill health. The appeal proceeded. Consideration was given by Judge Paul to the application to adjourn and he came to the view that the matter should proceed. In part, he took into account what appeared to be a lack of preparation by the Appellant's solicitors in advance of the hearing. The judge also took into account the paucity of medical evidence before the Tribunal sufficient to support the Appellant's contention that he was not well enough to attend. In the event Judge Paul dismissed the appeal.
5. Not content with that decision, by notice dated 23<sup>rd</sup> March 2017 the Appellant made application for permission to appeal to the Upper Tribunal. The matter was considered by Judge of the First-tier Tribunal Lambert and in a decision which appears to have been dated 31<sup>st</sup> July 2017 she refused to grant permission. She came to the view that the mere fact that the Appellant was in hospital was not sufficient grounds necessarily for the judge to grant the application. There were significant factors in the refusal relevant to the background of this case including a failed historic claim for international protection.
6. A renewed application was made to the Upper Tribunal dated 18<sup>th</sup> August 2017. The application was considered by a very senior Judge of the First-tier Tribunal, Judge Jordan, who noted from the medical evidence that was available and which I have seen, that the Appellant was seen in hospital and discharged with musculoskeletal pain for which he was prescribed ibuprofen and there was no follow-up.
7. Of course, it is possible that the Appellant was feigning in order to avoid a hearing. On the other hand, I have medical evidence which shows that the Appellant was not only admitted to hospital but remained in hospital overnight. He was admitted on 15<sup>th</sup> March 2017, the very date of the hearing, and not discharged until the following day. I can take judicial notice of the fact that the medics concerned with the Appellant were unlikely to have thought it necessary to detain the Appellant in hospital unless they were concerned enough, and thought it appropriate at the very least, to carry out some investigations.

8. The test for whether or not there should be an adjournment is not reasonableness. That is an error into which unfortunately a number of judges fall. The test for an adjournment is fairness and the authority for that proposition can be found in the cases of **Terluk v Berezovsky [2010] EWCA Civ 1345** and has been repeated, to reinforce the matter for the benefit of this Tribunal, in the case of **Nwaigwe (adjournment: fairness) [2014] UKUT 00418**. It is a basic tenet of common law that an individual must be given an opportunity to present their case.
9. Mr Melvin made the point that there was no evidence supporting the substantive claim being made by the Appellant so that whatever happened was not material. The difficulty with that proposition is that the Appellant himself is capable of giving evidence, which, subject to cross-examination, may be believed. I know not. He was not given the opportunity.
10. Of course, having highlighted the fact that it is possible, given this Appellant's history, that he may "conveniently" find himself suffering from some condition which gives him excuse not to attend on the next occasion, it may well be that a judge considering a further application to adjourn will have the same mindset as suggested by Judge Jordan in which he said at paragraph 3 of the grant, "Were history to repeat itself on the next occasion this appeal is listed for hearing, might well reach a different conclusion because the inference that the Appellant is using this as a device to avoid the hearing would be that much stronger."
11. In all the circumstances I find that there was procedural unfairness in this case. The decision is set aside. There will have to be a fresh hearing before a judge other than Judge Paul.

## **Decision**

The decision of the First-tier Tribunal contained a material error of law and is set aside.

## **Consequential Directions**

1. This appeal is remitted to Taylor House.
2. There shall be an expedited hearing of this appeal (the matter has been going on far too long).
3. This matter shall be placed before the Resident Judge at Taylor House for further directions and listing having regard to the direction that this matter shall be expedited.
4. The Appellant shall file and serve such evidence upon which he seeks to rely including any witness statement or statements from such person or persons that he may wish to call in support of his claim within fourteen days of the date of promulgation of the decision in this appeal in the Upper Tribunal.

5. No interpreter is required.
6. The failure to comply with these directions by the Appellant will mean
  - (a) that the Appellant will not be entitled to call any other evidence other than that which he has filed by that date without the specific leave of the Resident Judge at that Taylor House or any other judge nominated by him.
7. I note, in case it becomes a matter of concern, that I specifically asked the Appellant's solicitor who attended before me whether those directions were reasonable and he agreed that they were and I just observe that I hope that both sides' concerns are thereby met.

No anonymity direction is made.

**Signed**  
**Deputy Upper Tribunal Judge Zucker**

**Date: 18 December 2017**