



**Upper Tribunal
(Immigration and Asylum Chamber)**
PA/02687/2017

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 21st July 2017

**Decision and Reasons
Promulgated**

On 3rd August 2017

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**Mr Mashud Rana
(Anonymity Direction Not Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Gaffari, instructed by Londinium Solicitors
For the Respondent: Mr T Wilding, Senior Home Office Presenting
Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Bangladesh born on 11th August 1988. He entered the United Kingdom as a Tier 4 student migrant on 28th May 2014 with leave valid to 15th September

2015. On 18th September 2015 he made an application for further leave to remain which was refused. On 25th January 2016 he made a further application for leave to remain which was also refused on 31st March 2016 and he was served with a one stop notice. On 16th September 2016 he claimed asylum. That claim was refused by the Secretary of State on 9th March 2017. His appeal against that refusal came before First-tier Tribunal Judge Griffith on 18th April 2017 and on 8th May 2017 the judge dismissed the appeal on asylum, humanitarian protection and human rights grounds.

2. The appellant appealed on the basis that the hearing proceeded without the presence of the appellant. The Tribunal 'failed to inform their decision taken at the CMR on 4th April 2017 in response to the Appellant's request for a paper based hearing'.
3. The First-tier Tribunal Judge recorded that the appellant's solicitors had requested a paper based hearing and recorded his response that the Tribunal found that the appeal was not suitable to be decided on the papers in view of the protection issue raised[22]. The First-tier Tribunal did not communicate the decision - that there could not be a paper based hearing to the appellant or his representatives. The appellant maintained that had he been informed of the decision taken at the CMR he would have made arrangements to make himself present and also would have arranged his legal representatives to be there. Although the judge stated that the appellant was afforded an opportunity to be present and failed to do so, the Tribunal failed to communicate its decision taken at the CMR to the appellant and he was therefore unfairly denied a hearing.
4. Further the judge erred in his approach to the credibility of the appellant. He had disregarded material facts and there was only a short delay between the appellant arriving in the UK and claiming asylum which was only for five months. Further, the appellant only advanced the asylum claim when necessary as previously he had a right to be in the UK.
5. Permission was granted seemingly in relation to the procedural issue on the basis that the solicitors were not informed.
6. At the hearing before me the appellant's representative produced a bundle of documents with a letter attached from Londinium Solicitors dated 27th February 2017. This, it was asserted had been sent to the Secretary of State. There was no indication that this evidence had been forwarded to the Tribunal.

7. Mr Wilding submitted that there the solicitors had merely acted on the assumption that the matter would proceed on the basis of a paper hearing because of their request. Unless it was adjourned they should assume that the hearing would proceed.
8. On inspection of the file it appears that the solicitors were advised in a Notice from the Tribunal dated 17th March 2017 that there was to be a pre hearing review and a full hearing on 4th April 2017. That notice also advised that the reply notice was to be submitted by 31st March 2017 and failure to do so may mean that the Tribunal would determine the appeal. The Reply Notice was indeed sent to the Tribunal on 3rd April 2017 (out of time) indicating that the appellant wished to have a paper hearing.
9. It should be noted the Notice from the Tribunal sent on 17th March 2017 advised that
'if the appeal proceeds to a Full hearing, the hearing will be on Tuesday April 18th 2017' .
10. There was in fact a pre-hearing review on 4th April 2017 before DJ Campbell who identified that the Appellant's solicitors had asked for the appeal to be decided without a hearing. Judge Campbell decided this was not appropriate and the appeal remained listed for oral hearing. It was also noted that the Appellant was unlikely to attend.
11. Nothing sent by the Tribunal unsettled the previous direction that the full hearing would take place on 18th April 2017. The solicitors had already, prior to their request, received notice that the hearing would take place on that day.
12. Also sent out to the solicitors on 17th March 2017 were directions that the appellant should send to the Tribunal a witness statement and paginated and indexed bundle of '*all the documents to be relied on at the hearing*'. There was a direction that these documents were to be sent to the Tribunal and the respondent to arrive no later than 5 days before the date of the Full Hearing. Clearly the Tribunal had sent out a Notice of the hearing and notice that documentation should be provided.
13. In essence both the solicitors and appellant were notified of the full hearing date on 18th April 2017 and it was not disputed that this had been received. I established that the solicitors had in fact sent no paperwork to the Tribunal in response to the direction Notice to provide evidence. Nothing had been received by the Tribunal.

14. The appellant had also been advised to submit paperwork prior to the hearing. It was clear that the Tribunal gave the appellant the opportunity to attend and that he and his solicitors were advised of the date. I find that there was in fact no procedural unfairness to the appellant. He had indicated that he did not wish to attend. A further notice of hearing was sent out to both the appellant and his solicitors dated 4th April 2017 but this merely reiterated the date of the hearing which had already been transmitted to the parties.
15. I am not persuaded that there was, on careful analysis, an error in the First-tier Tribunal Judge's approach. The appellant accepted himself that even though he wished to have the matter dealt with on the papers he had submitted nothing. That was noted by the judge at [30].
16. He did not, as the grounds assert, fail to claim asylum for five months. He failed to claim asylum for two years and despite on two occasions previously being served with a one stop notice. That too the judge rightly points out at [31]. Nonetheless the judge considered the appellant's statement in his interview and considered that he was not specifically targeted.
17. In essence the judge found the appellant had entered the UK as a student and having failed on two occasions to extend his leave, had embellished and fabricated an asylum claim in order to delay his removal from the UK. The judge did not accept he was ever a member of the BNP or the events of which he complained in Bangladesh, and which occurred prior to his entry to the UK.
18. I find no procedural errors which affected the judge's decision such that it contained an error of law and the First-tier Tribunal Judge's decision shall stand.

Signed
2017

Helen Rimington

Date 21st July

Upper Tribunal Judge Rimington