



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01296/2019

THE IMMIGRATION ACTS

Heard at Field House
On 22 August 2019

Decision & Reasons Promulgated
On 11 September 2019

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

P P
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Dr Chelvan of Counsel, instructed by Duncan Lewis & Co Solicitors

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission the decision of First-tier Tribunal Judge Phull promulgated on 29 May 2019, in which his appeal against the refusal of his protection and human rights claims were dismissed.
2. The Appellant arrived in the United Kingdom as a minor with leave to remain as an unaccompanied asylum seeking minor to 28 February 2018. When his claim was initially refused he appealed against the refusal of his asylum claim, which was dismissed in 2016. Prior to the expiry of his leave to remain in February 2018, he

made an application for further leave to remain which again relied on protection and human rights grounds. That claim was refused by the Respondent on 8 November 2018, on the basis that the new documents that were submitted at the time of the later claim were not credible and added little to the weight of the claim. Reliance was placed on the earlier 2016 First-tier Tribunal decision.

3. When the matter came before the First-tier Tribunal in 2019, the Appellant was legally represented, albeit he has since made a formal complaint against those representatives for failing to give him proper advice and failing to properly prepare his appeal before the First-tier Tribunal. In particular, the Appellant had spoken to his representatives about his friend Ali, who had arrived in the United Kingdom at the same time as the applicant and whose asylum claim was, to a great extent, factually linked and whose appeal against the Respondent's refusal of his claim had been successful, after the the date of the Appellant's first appeal in 2016. The Appellant's representatives had not taken steps to obtain or submit evidence of this to the First-tier Tribunal in 2019, although the potential significance and relevance of these facts to the Appellant's credibility and appeal were recognised by both the Home Office Presenting Officer and the First-tier Tribunal at the hearing. As is recorded in the decision, the Home Office Presenting Officer had, during the course of the hearing, sought to find further information about Ali's claim but was unable to do so on the day for lack of a reference number and specific details.
4. In making the decision on appeal, the First-tier Tribunal considered that the evidence of the Appellant's friend would have been relevant, in particular in relation to assessing the credibility of the Appellant's claim. However, in the absence of that evidence, the First-tier Tribunal did not find the Appellant credible, the claim being found to be implausible and the Appellant not therefore being at risk on return to Iran.
5. The application for permission to appeal was on the grounds that the First-tier Tribunal had failed to take into account the determination of the Appellant's friend's appeal; that the evidence was now available and accompanied by a Rule 15(2A) application and further that there was also a failure to apply the correct standard of proof and a failure to attach appropriate weight to documents. Specifically, the First-tier Tribunal failed to attach proper weight to a hospital letter about the Appellant's father because it did not show that he was in prison prior to admission; however, it is accepted by both parties that the document expressly stated that he was transferred from prison to hospital, consistent with the Appellant's claim.
6. Permission to appeal was granted by Upper Tribunal Judge Rintoul on the basis that there had been a complaint to previous solicitors about the conduct of the appeal and applying Ladd v Marshall [1953] 1 WLR 1489, the new material may arguably need to be taken into account, although all limbs of that test must be satisfied. The Rule 15(2A) application consists of a witness statement of the Appellant dated 8 August 2019, a letter of complaint to his previous solicitors of the same date, the First-tier Tribunal decision of his friend dated 23 May 2016, his friend's asylum interview records from the 19 May 2015 and a written statement from his friend.

7. The three limbs of the test in Ladd v Marshall for new evidence to be admitted are, in summary, first, that the fresh evidence could not have been obtained with reasonable diligence for use at the trial; secondly, that if given, it probably would have had an important influence on the result; and, thirdly, that it is apparently credible although not necessarily incontrovertible. Both parties accept that there is some flexibility in the application of these principles in the context of a protection claim and that the fact that failure to adduce the evidence was that of the previous legal representatives should not, particularly where a formal complaint has been made, prevent the satisfaction of the principles in this case.
8. I accept, in accordance with the principles in Ladd v Marshall and in the particular factual circumstances of this appeal, that these further documents should be admitted. Although in relation to the first principle, it is at least arguable that the material was available at the time of the First-tier Tribunal decision with due diligence from legal representatives, a flexible approach must be taken to those principles in a protection claim and to satisfy the requirements of the interest of justice in the circumstances of this case. The documents primarily emanate from the Respondent and the First-tier Tribunal such that their credibility is not in doubt and as recognised by the First-tier Tribunal at the time, they would clearly be relevant to the outcome of the appeal. In all of these circumstances, I find that it is appropriate and in the interests of justice to admit the further material.
9. The further material shows that the appellant's friend's asylum claim has been considered and found to be credible by the First-tier Tribunal, the claim being a substantively similar one to the Appellant's claim both relying on a joint enterprise between their respective fathers. Once that further material is taken into account, the credibility findings of the First-tier Tribunal are undermined as it significantly supports the Appellant's claim. Taking these documents into account, I find an error of law in the First-tier Tribunal's decision. I would add that is not a case in which the First-tier Tribunal Judge can directly be criticised because these further documents were not before the Tribunal at the relevant time, but it is right and proper in this case to set aside the decision of the First-tier Tribunal and remit it back to for a de novo hearing.
10. For completeness, the parties are in agreement that there was also an error of law in relation to the hospital letter, the contents of which were not accurately considered by the First-tier Tribunal. In reality this ground adds little to the finding of an error of law on other matters which necessitates the setting aside of the decision to be reheard de novo in any event.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remit the appeal for a de novo hearing before the First-tier Tribunal (Taylor House hearing centre) before any Judge except Judge Phull.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed

Date

5th September 2019

Upper Tribunal Judge Jackson