



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

Appeal Number: PA/09007/2018

THE IMMIGRATION ACTS

Heard at North Shields

On 1 March 2019

**Decision & Reasons
Promulgated
On 5 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

**A. S.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms Brakaj, Solicitor, Iris Law Firm

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

The Appellant, a citizen of Iraq, entered the UK illegally and made a protection claim which was refused on 6 July 2018. The Appellant's appeal against that decision was heard, and allowed, by First-tier Tribunal Judge Dearden, in a decision promulgated on 10 September 2018.

The Respondent's application for permission to appeal was granted by First-tier Tribunal Judge Chohan on 5 October 2018 on the ground that it was arguable the Judge had failed to conduct a fair hearing. The Appellant did not reply to that grant with a Rule 24 response.

As the Judge records in his decision, the Respondent applied to the Tribunal by fax on the morning of the hearing for an adjournment. The reason given was that the presenting officer due to attend the hearing had fallen ill. The fax in question is not on the Tribunal file, and Mr Diwnycz has not been provided with a copy amongst the papers supplied to him either. There is however no doubt that such a request was made, since the Judge refers to it in his decision [11-13]. The Judge recorded that he refused the application because he considered that a large organisation should be able to deploy a substitute at short notice. He recorded no enquiry made by him as to the circumstances lying behind the application, or, whether it would be practical for the Respondent to field an alternative representative later in the day, if given the opportunity to do so.

I am satisfied that the Judge's approach to the adjournment application demonstrated a clear error of law. The relevant principles are set out in Nwaigwe (adjournment: fairness) [2014] UKUT 418. There was apparently no attempt to ascertain all the material facts behind, or relevant to, the application. The size of the Home Office was of little, or no, relevance to the application. The relevant questions were; (i) where the Respondent's file was and whether it could be accessed, (ii) whether any suitably qualified local member of staff able to prepare for the hearing as a replacement could be identified once it was known that the original had fallen ill, and, (iii) how long that preparation would take. They were neither asked, nor answered. However well run, any organisation can be caught out by unforeseen events. The Judge's approach necessarily deprived the Respondent of his right to a fair hearing.

In the circumstances, the Respondent has made out his case of procedural unfairness, and the only proper course is that the appeal should be remitted for hearing afresh. None of the findings of fact made by the Judge are safe, or can be preserved. In circumstances such as this, where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the parties of the opportunity for their case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 13 November 2014. Moreover the extent of the judicial fact finding exercise required is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 13 November 2014.

To that end I remit the appeal for a fresh hearing by a judge other than First tier Tribunal Judge Dearden, at the North Shields Hearing Centre. A Kurdish Sorani interpreter is required. The parties accept they have already filed the evidence they wish to place before the Tribunal. Accordingly the remitted appeal is suitable for the short warned list. The parties should expect the appeal to called on for hearing at short notice.

Notice of decision

1. The decision did involve the making of an error of law sufficient to require the decision to be set aside on all grounds, and reheard. Accordingly the appeal is remitted to the First Tier Tribunal for rehearing de novo, with the directions set out above.

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 his 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
2019
Deputy Upper Tribunal Judge J M Holmes

Date 1 March