



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/05711/2017

**THE IMMIGRATION ACTS**

Heard at Glasgow  
On 28 June and 2 August 2018

Decision issued  
On 10 August 2018

Before

**UPPER TRIBUNAL JUDGE MACLEMAN**

Between

**ALAN [A]**

Appellant

and

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

Respondent

**Representation:**

*For the Appellant:*

*Mr S Winter, Advocate, instructed by Gray & Co, Solicitors*

*For the Respondent:*

*on 28 June, Mr A Govan, and on 2 August, Mrs M O'Brien, Senior Home Office Presenting Officers*

**DETERMINATION**

1. The appellant appeals against the decision of FtT Judge David C Clapham SSC, promulgated on 9 August 2017.
2. The hearing in the FtT was fixed for 19 July 2017. On 18 July, the appellant's representatives faxed a letter to the FtT seeking an adjournment. They explained that the appellant had called at their offices that day with a package of documents received from Iran, said to be his *shenaznama* (an identity document), two court

documents and a letter from his uncle; and that counsel had advised that an adjournment should be sought, to have the documents translated and authenticated.

3. On the same day, the FtT issued a refusal of the application, stating, "There has been adequate time to ensure preparation of this case".
4. At the outset of the hearing the next day, Mr Winter renewed the application. He founded upon the potential importance of the documents and advised that legal aid had been obtained for the appellant's further purposes.
5. At paragraph 11 the judge says that he "could not be an appeal court from the senior judge" and that his "discretion was fettered". As the grounds had been considered by the senior judge not to justify any adjournment, he refused the application.
6. An adjournment which has been refused will generally not be granted on a renewed application, absent any change of circumstances, and tribunals will not waste much time in disposing of such applications. However, applications are to be considered on their own merits and not on the basis that the exercise of discretion has been fettered.
7. The grounds of application were advanced at the hearing in greater detail and placed in the context of the lengthy case history. The documents went to long-standing issues.
8. Parties obviously may often expect a sceptical attitude to be taken to last-minute productions; but while this does not excuse lateness, or justify adjournment, any failure to take advantage of time to prepare was the responsibility of the appellant not of representatives. (The appellant advanced his explanation in oral evidence when the hearing proceeded.)
9. Judge Clapham took too narrow a view. The decision of the previous day should have carried significant weight, but it should not have been treated as binding.
10. After the oral evidence had been led, in course of submissions, Mr Winter sought an adjournment on a "part heard" basis for translation and authentication of the documents. There is no record in the decision of that application and no explanation of why that course was not adopted.
11. The respondent was not represented in the FtT. Mr Govan acknowledged that if there had been a presenting officer, the respondent might reasonably have acquiesced in postponing the final resolution.
12. It was an error of law to reach a final disposal without giving both parties the opportunity to translate the documents and (so far as that might be possible for either party) to authenticate them.
13. The original documents, as received by the appellant's solicitors, were passed at the hearing on 28 June 2018 to the respondent.

14. Copies of the documents and of the translations obtained by the appellant are in the inventory thereof filed with the UT, items 1 - 4.
15. There is now also on the file the respondent's "document verification report", under cover of a fax from the respondent transmitted on 20 July 2018.
16. It is unfortunate that a case with such a history must be remitted again for a fresh hearing, but as agreed by parties at the resumed hearing on 2 August 2018, under section 12 of the 2002 Act and Practice Statement 7.2, that is the appropriate course.
17. The decision of the FtT is **set aside**. It stands only as a record of what was said at the hearing.
18. The member(s) of the FtT chosen to consider the case are not to include any Judge who has previously been involved in these proceedings (which includes Judge Wood, Judge Montgomery, and Judge Clapham).
19. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

2 August 2018  
Upper Tribunal Judge Macleman