Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06812/2018

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 24 September 2018	**On 4 October 2018**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

A E B
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Sesay, of Counsel, instructed by Duncan Lewis Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a Moroccan national born on 27 August 1989. He challenges the determination of First-tier Tribunal Judge Lal, promulgated on 27 June 2018, dismissing his deportation and asylum/human rights appeal. He is a visitor overstayer whereabouts has a conviction for robbery in January 2018 for which he received a

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14-month prison sentence. His claim is that he is gay and that his father and uncle attacked him when they discovered this and that he lost a tooth as a result of this.

2. The complaint made by the appellant is that he should have been granted an adjournment of the hearing listed for 26 June 2018. Although for the pre-hearing review listed for 19 June 2018, the appellant's representatives' written response asked for the appeal to proceed to an oral hearing after the review hearing, it was also indicated that an adjournment request would be made.

3. A written application was duly made, dated 18 June 2018, but does not appeal to have reached the Tribunal by 19 June 2018 when the pre-hearing review was conducted. The representatives' letter seeks an adjournment to enable the appellant to obtain a Rule 35 medical report and copy of his medical records "within six weeks". The evidence was to confirm the loss of a tooth, the appellant having claimed that his father had head butted him in Morocco. It was also stated that the appellant wished to obtain evidence from his former gay partners in the UK and from his sister in "Albania". A request was also made for the respondent to adduce evidence of the appellant's conviction and the remarks of the sentencing judge. It was also stated that the representatives had been instructed on 8 May 2018 and there was insufficient time to prepare for the hearing. The application was refused on 20 June 2018 on the basis that the appellant had had two years to gather together his evidence. The application was renewed at the hearing but refused by the judge who considered that the Tribunal was capable of determining the credibility of the claim in relation to the claim of violence in Morocco from his family (at paragraph 10).

4. Permission to appeal against the determination of the First-tier Tribunal was granted by Judge Keane on 26 July 2018 on the basis that there may have been a procedural irregularity in refusing to grant the adjournment request. The matter then came before me on 24 September 2018.

5. **The Hearing**

6. I heard submissions from the parties. The appellant is still in custody and was not present. A full note of the submissions is set out in my Record of Proceedings.

7. Mr Sesay argued that the judge had been wrong to prevent the appellant from obtaining evidence in support of his appeal. He intended to obtain evidence from his former partners in the UK and from his family in Morocco. The reference to Albania in the

adjournment request letter was a mistake. The appellant suffered from anxiety and depression. The judge had also erred in attaching weight to the delay in making an asylum claim. The appellant had explained he was not aware of the asylum process and that was a reasonable explanation. Had the appellant been given an opportunity to present his evidence and ventilate his claim, the outcome might have been different.

8. Mr Lindsay responded. He stated that the information before the judge was that evidence from Albania was sought; that was now said not to be the case. There was no reason why evidence from the UK which was also sought cd not be obtained quicker. The judge had considered the appellant's explanation for the delay in making an asylum claim but had not found it to be credible. Strong reasons had been given for the rejection of the claim; other than the delay there had been a complete failure to mention the police visit to the house. Evidence as to his sexuality would not, in any event, be of probative value. The appellant's conviction showed a dishonest character. The judge had been well placed to assess the credibility of the claim. The Rule 35 report would only have shown that he had lost a tooth. That could not be material to the claim.

9. Mr Sesay replied. He submitted that the test was whether it had been fair to proceed in the absence of the evidence the appellant hoped to adduce. The appellant had mentioned his relationships and evidence to confirm that would be relevant. He had also claimed to have lost a tooth when attacked by his father. The reference to Albania as a source of information was a mistake.

10. That completed submissions. At the conclusion of the hearing, I reserved my determination which I now give with reasons.

11. **Discussion and Conclusions**

12. I have considered all the evidence before me and have had regard to the submissions made.

13. The issue before me is whether or not the appellant had a fair hearing. Mr Sesay fairly accepted that the appellant had been in the UK for a prolonged period prior to the making of his asylum claim. Clearly, he would have had ample opportunity to obtain supporting evidence, although his claim is that he was not aware of the asylum procedure. I accept that the appellant did not have legal representation until some 6-7 weeks prior to the hearing and I also accept the appellant himself may not have appreciated what evidence was required until then. It is also the case that he was in custody when the claim was made and when he was interviewed and

indeed remains incarcerated. Whether it is meritorious or fabricated is another matter, but I agree with Mr Sesay's submissions that he ought to have been given the chance to present all possible evidence before that decision was made. The reference in the grounds to the appellant being told that the Rule 35 report was due in just a few days is unsupported by any evidence and contradicts the claim made by the representatives in the adjournment letter of six weeks being needed. I was not told if it was subsequently adduced. However, whether it was due in a few days or a few weeks is not really material to the issue of whether it should have been awaited.

14. I also accept that the reference to Albania in the written request for an adjournment was a careless mistake by the appellant's representatives. It should not have happened and suggests a lack of care, but the appellant should not be penalised for that.

15. For these reasons, I conclude that the request for an adjournment should have been granted. Without the evidence identified in the letter, the appellant did not have a fair hearing, however weak the claim may have been. The determination is unsustainable, and the decision is set aside.

16. **Decision**

17. The First-tier Tribunal made errors of law. The decision is set aside. It shall be remade by another judge of the First-tier Tribunal at a date to be arranged.

18. **Anonymity**

19. I continue the anonymity order made by the First-tier Tribunal.

Signed

Upper Tribunal Judge

Date: 1 October 2018