



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/12688/2018

THE IMMIGRATION ACTS

Heard at Field House
On 21 August 2019

Decision & Reasons Promulgated
On 18 September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

JACQUES DE BRUYN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance and no representative.

For the Respondent: Ms K Pal, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Isaacs promulgated on 11 February 2019 in which the Appellant's appeal was dismissed on human rights grounds.
2. The Appellant is a citizen of South Africa born on 2 October 1975. His immigration history is a matter of record set out in the papers on file and for present purposes it is unnecessary for me to repeat its entirety here. Pertinently, he applied for leave to remain on human rights grounds on 17 February 2017; his application was refused

on 23 May 2018. In his application - and in turn in substance in his appeal - the Appellant sought to rely upon a current relationship with a partner, Ms [GL], and also upon paternal relationships with three children from two previous partners. The Respondent did not accept that the Appellant had established that he was in a subsisting relationship with Ms [L], and also did not accept that the Appellant had provided adequate evidence to demonstrate that he was in a continuing paternal relationship with his children.

3. The Appellant appealed to the IAC.
4. The appeal before the First-tier Tribunal was originally listed for 10 January 2019, but was adjourned in circumstances where the Appellant had been unable to attend having been the victim of a knife attack on 8 January 2019. The appeal was relisted for 29 January 2019. The Appellant again did not attend.
5. It is evident from the materials on file, and expressly addressed in the decision of First-tier Tribunal Judge Isaacs, that the Appellant communicated with the Tribunal to the effect that he was not able to attend the hearing on 29 January 2019 because he had been the victim of an assault on the evening before. Notwithstanding this circumstance Judge Isaacs determined that it was appropriate to proceed with the appeal in the Appellant's absence. The Judge then decided the substantive issues in the appeal on the basis of the available documentary evidence. The appeal was dismissed for the reasons set out in the decision of the First-tier Tribunal.
6. The Appellant applied for permission to appeal to the Upper Tribunal. The substance of the application was essentially a pleading that, in particular, his relationships with his children were genuine and of great importance and significance to him.
7. The application for permission to appeal was refused in the first instance by First-tier Tribunal Judge Fisher on 15 March 2019. The Appellant renewed his application for permission pleading essentially the same grounds. Permission to appeal was granted by Deputy Upper Tribunal Judge McGeachy on 3 May 2019 in the following terms:

"Although the grounds of appeal drafted by the appellant concentrate on his relationship with his children over the last two years since the application was made it is of concern that the Judge in the First-tier did not adjourn the hearing as it appears from the evidence produced that there were clear reasons why the Appellant had not attended the hearing, which was such that on the evidence before her, it is arguable that the judge should have adjourned the appeal.

I will therefore grant permission as I consider that given that the appeal relates to the Appellant's relationship with his children and a claimed partner it is arguable that it would be appropriate that the Appellant's oral evidence should be considered."

8. The hearing before the Upper Tribunal was first listed for consideration on 4 June 2019. The Appellant again did not attend. Communication was established with him on that occasion and he indicated that he had not received due notice of the hearing because of a change of address - albeit that it is apparent that he had not informed the Tribunal of that change of address. On that occasion Deputy Upper Tribunal Judge Chapman, decided that the Appellant should be afforded a further opportunity to attend his appeal, but in her decision/directions promulgated on 4 June 2019 warned *"If the Appellant fails to appear on the next occasion that the hearing is listed then it is liable to be dismissed summarily"*.
9. It is indeed the case that the Appellant has yet again failed to attend the Tribunal. I am satisfied that due notice of the hearing has been served on him. No communication has been received from him to explain his absence. Further, I note that no further supporting evidence has been filed by the Appellant in relation to the issues in the appeal since the dismissal of his appeal by the First-tier Tribunal. Accordingly, there is no up-to-date information in relation to his claimed relationships with his children or any relationship with a partner.
10. In circumstances where there is no explanation for the Appellant's non-attendance, and there does not appear to be any serious attempt to engage with the appeal proceedings or the issues in the appeal, I was satisfied that it is appropriate to proceed with the appeal before the Upper Tribunal in the absence of the Appellant.
11. However, notwithstanding the warning of Judge Chapman, I do not consider it appropriate to dismiss the appeal summarily: I have given consideration to the issues raised and the issues highlighted in the grant of permission to appeal.
12. I first consider whether or not Judge Isaacs was in error in proceeding with the appeal in the Appellant's absence, or otherwise acted in a way that rendered the proceedings unfair.
13. Necessarily the Appellant is not present to prosecute that argument; nor, it is to be noted, is it an argument that he had expressly raised in his grounds of appeal, it really only being identified in the grant of permission by Judge McGeachy.
14. I have had careful consideration to Judge Isaacs' decision. It seems to me that before proceeding to consider the substance of the issues in the appeal, Judge Isaacs gave very careful consideration to the circumstance of the Appellant's absence and whether or not it was appropriate to proceed with the appeal: see paragraphs 10-26. I do not propose to simply set out again what Judge Isaacs said in this regard, but I can identify no error of approach.
15. Judge Isaacs - in my judgement appropriately and in a manner entirely open to her - concluded that there was nothing in the materials that the Appellant had sent to the Tribunal that demonstrated that he could not attend the Tribunal on the day of the hearing, even if it was only to ask for an adjournment.

16. No witnesses attended on behalf of the Appellant. In the circumstances the Judge, having had regard to the basis upon which the Appellant claimed he was unable to attend the hearing, and also having had regard to the history of the proceedings and the issues in the appeal, reached an entirely sustainable and understandable decision to proceed in the Appellant's absence. Had the Appellant attended it is wholly unapparent what his oral evidence could possibly have convincingly added to the appeal. The Judge implicitly recognised this at paragraph 26.
17. In this latter regard, and generally, it is to be noted that the fundamental difficulty for the Appellant in the application and appeal was that he had quite simply failed to provide any satisfactory supporting evidence as regards his claimed relationships; this continued to be the situation on appeal notwithstanding that the absence of adequate supporting evidence had clearly been put in issue in the Respondent's decision letter. Ms [L] had only provided a letter which, albeit being undated, the judge was in effect able to date to a time prior to 16 February 2017, see paragraphs 31, 33 and 55 of the decision of the First-tier Tribunal. Accordingly, there was nothing remotely contemporaneous from Ms [L] that supported the notion that the Appellant was in a relationship with her. In this regard the Judge also noted the addresses that the Appellant used did not match any of the addresses that were on file in respect of Ms [L]. In the absence of attendance by Ms [L], and in the absence of any further documentary evidence having been filed from her, it is impossible to see how the Appellant could have succeeded in discharging the burden of proof on the basis of his oral testimony alone, particularly bearing in mind that the fact of this relationship was a key issue in the refusal.
18. Similarly, there was no updating information in respect of the claimed relationships with the Appellant's children and no supporting evidence from any of their mothers that were contemporaneous with the appeal. Accordingly, the materials were considerably out of date. The Judge embarked on a careful analysis of the available materials and reached entirely sustainable conclusions that the documentary evidence did not support the notion of a contemporaneous relationship or an ongoing and subsisting parental relationship with the children. Again, in the absence of further documentary evidence, it is not apparent how the Appellant's oral testimony alone could have established to the requisite standard of proof that he was in subsisting relationships.
19. In the circumstances the Judge's evaluation that the Appellant had not demonstrated a satisfactory reason for his non-attendance, and the judges further implicit evaluation that the Appellant's oral evidence would not materially add to the available written materials, are not to be impugned. Such matters were the core reasons for not adjourning the appeal and deciding to proceed in the Appellant's absence. In the circumstances I identify no error of law and no procedural unfairness in the Judge's approach.

20. It cannot escape comment that it is still the case that the Appellant has not filed any further evidence in respect of any of the substantive issues in the appeal. In such circumstances his case has no discernible merit. Further, it continues to be the case that he appears to be unprepared to engage appropriately with the appeal proceedings. Had I been of the view that there was unfairness in the First Tier Tribunal proceeding in the Appellant's absence, I would have declined to exercise the discretion in section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 to set aside the decision of the First-tier Tribunal.

Notice of Decision

21. The decision of the First-tier Tribunal contained no error of law and accordingly stands.
22. The Appellant's appeal remains dismissed.
23. No anonymity direction is sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: **17 September 2019**

Deputy Upper Tribunal Judge I A Lewis