



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005524

First-tier Tribunal Nos: PA/50366/2023
LP/00804/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

6th March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR SMZZ
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Jaffrey, Legal Representative, SAJ Law Chambers
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on 31 January 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the Appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a national of Pakistan born on 12 May 1979. He arrived in the UK in June 2011 as a student and subsequently made an asylum claim which was refused and his appeals were dismissed. On 1 December 2021 he made further submissions which were refused in a decision dated 12 December 2022, with the right of appeal. He appealed against that decision and his appeal came before First-tier Tribunal Judge Mace for hearing on 19 September 2023. In a decision and reasons dated 21 October 2023 the judge dismissed the appeal.
2. Permission to appeal was sought on the basis that the judge materially erred in law in failing to adjourn the appeal so that the Appellant's brother, Mr S I Z, could attend in order to give evidence to corroborate his claim and although other grounds were raised the second point materially was that the judge failed to take into account material evidence in the form of a letter from the president of the Hub-e-Ali Centre which was before her in the supplementary bundle.
3. Permission to appeal was granted by Judge Parkes on 17 December 2023 on the basis that:
 - “2. The grounds argue that the hearing was flawed with the refusal of an adjournment application for the Appellant's brother to attend the hearing as a witness, he was in Pakistan as their father was ill. The application on the day was refused as his brother had made a witness statement but then the Judge attached little weight to it given his absence. It is also argued that the Judge made a number of other findings which overlooked the Appellant's evidence and religious practice. It is argued that the findings on article 8 are contradictory and confusing.
 3. The grounds are overblown in the terminology used but are arguable having regard to the view taken of the brother's witness statement in his absence having first refused the application to adjourn. Evidence of the application made on the day of the hearing will need to be provided and, if possible, agreed with the Home Office.
 4. The grounds disclose arguable errors of law and permission to appeal is granted”.

Hearing

4. The hearing came before the Upper Tribunal when the Appellant was again represented by the same representative, Ms Jaffrey, legal representative from SAJ Law Chambers. Mr David Clarke appeared on behalf of the Secretary of State. At the outset Mr Clarke indicated that he was minded to make a concession in relation to the letter from the president of the Hub-e-Ali Centre on the basis that that was before the judge. Mr Clarke stated he had been unable to access the taped recording of the proceedings before the First-tier Tribunal Judge, therefore, we agreed that the recording should be played to the parties so that it could be understood what in fact had taken place.
5. Two things are clear from having listened to the first seven minutes of the tape. Firstly, that there is no record that Ms Jaffrey sought an adjournment on the morning of the hearing. When she was asked by the judge whether she was renewing her adjournment request or was happy to proceed she said that she was happy to proceed. On that point Ms Jaffrey stated from her recollection she did seek an adjournment and there was discussion about the witness statement

of the Appellant's brother and it was possible that this conversation took place before the recording started. I informed Ms Jaffrey that whilst that was, of course, possible given the tape did not support her contention it was important that she waited until the recording had started to make submissions before the judge.

6. Further, that if Ms Jaffrey wished to give evidence about matters before the First-tier Tribunal that she needed to provide a witness statement and step back from her role as advocate in the case and also to attach a typed record of her proceedings to support her position: see BW (witness statements by advocates) Afghanistan [2014] UKUT 00568 (IAC).
7. In light of the fact that the recording of the proceedings does not show that an adjournment request had been made on the morning of the hearing, I do not find a material error of law in that respect.
8. However and secondly, having listened to the recording, whilst the judge makes reference to a supplementary bundle in two parts in addition to the Appellant's and Respondent's bundle as well as a stitched bundle, Ms Jaffrey is heard stating that she handed a bundle of evidence in the form of a further supplementary bundle to the usher and the judge confirmed that she had this bundle. It was accepted by Mr Clarke that this is the bundle that contained the letter from the president of the Hub-e-Ali Centre and consequently that he conceded the judge had made an error of law in failing to take that material evidence into account.

Decision and Reasons

9. In light of Mr Clarke's helpful concession, which I accept, I find the judge made a material error of law in failing to take account of evidence material to a proper assessment of the Appellant's religious practices. This is a matter to which the statement of his brother also pertains. In these circumstances, albeit bearing in mind the decision of the Upper Tribunal in Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC) I find given that the Appellant's brother's evidence has not been assessed by an independent Tribunal that it is appropriate to remit this appeal for a hearing *de novo* before the First-tier Tribunal so that the evidence can be given holistic consideration by the First tier Tribunal.
10. I make the following directions.
 - (1) Any further evidence that the Appellant wishes to rely upon and any skeleton argument is to be submitted 7 working days before the hearing.
 - (2) An Urdu interpreter will be required.

Rebecca Chapman

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 February 2024

