



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

Appeal Number: HU/13187/2017

THE IMMIGRATION ACTS

Heard at Priory Courts Birmingham

Decision & Reasons

On 5 February 2019

Promulgated

On 18 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**NASEEM IQBAL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs S Ahmad of Ahmad and Williams Solicitors

For the Respondent: Mr M Diwnycz Senior Home Office presenting officer

DECISION AND REASONS

Introduction and Background

1. The appellant appeals against a decision of Judge Graham (the judge) of the First-tier Tribunal (the FTT) promulgated on 24 September 2018.
2. The appellant is a citizen of Pakistan born 7 January 1973. He applied for leave to remain in the UK as the parent of a British child. The application was refused on 11 October 2017 and the appeal was heard on 30 August 2018.

3. The appellant did not attend the hearing. His representative attended and advised that the appellant was ill and could not attend. The representative applied for an adjournment to enable the appellant to attend. Another reason for the adjournment request was that the appellant had instructed his solicitors on 10 August 2018 and they needed further time to prepare the case. The judge was told that the appellant had applied to the Family Court a month ago for a contact order in respect of his son but no hearing date had yet been given.
4. The judge dealt with the adjournment application at paragraphs 7-11 of her decision. The application to adjourn was refused. With reference to the appellant's illness the judge noted that there was no medical evidence to support the contention that the appellant was unfit through illness to attend the hearing. The judge told the representative that if medical evidence to confirm that the appellant was too ill to attend was sent in within 24 hours it would be considered. The judge recorded that at the date of preparation of her decision which was 14 September 2018 no medical evidence had been supplied.
5. In respect of the application to the Family Court the judge found it questionable whether this was necessary given that the appellant's representative stated that the appellant had a written agreement with his former partner in respect of contact with his child. There was no evidence that the application to the Family Court had been made by the appellant prior to instructing his representatives and no hearing date had been allocated. The judge was satisfied that the hearing should not be adjourned on this ground.
6. The judge noted that the initial hearing of this appeal had taken place on 11 May 2018 and on that occasion the hearing had been adjourned at the request of the appellant because the solicitors representing him had been closed down. The judge had advised the appellant that he should instruct new solicitors as the hearing would not be adjourned again for lack of legal representation. The judge was satisfied that the appellant had had sufficient time to instruct solicitors so that his appeal could be ready for hearing on 30 August 2018.
7. When the adjournment application was refused the appellant's representative withdrew. The judge proceeded to hear the appeal in the absence of the appellant and his representative. The judge noted the lack of a bundle of documents on behalf of the appellant and the absence of any witnesses. The judge was not satisfied that the appellant had a genuine and subsisting parental relationship with his child and was not satisfied that he was taking and intended to take an active role in the child's upbringing. The judge concluded that the appellant could not satisfy appendix FM in relation to family life.
8. The judge considered the appellant's private life noting that he only entered the UK in May 2011 and that he had lived in Pakistan for the first 38 years of his life and he had a wife and three children to return to in

Pakistan. The judge found no very significant obstacles to the appellant's integration in Pakistan and therefore concluded that he did not satisfy paragraph 276 ADE (1) (vi) of the immigration rules.

9. The judge did not find that the appeal disclosed any exceptional circumstances which would result in unjustifiably harsh consequences if the appellant had to return to Pakistan. The judge noted that the best interests of the child would be to remain with his mother and that both are British citizens and would remain in the UK if the appellant returned to Pakistan. The appeal was dismissed.
10. The appellant, through his solicitors, applied for permission to appeal to the Upper Tribunal. It was contended that there had been a procedural impropriety in refusing the adjournment request. The solicitors made reference to the Tribunal Procedure Rules 2005, notwithstanding that those rules were replaced in October 2014. The solicitors should have been aware of that, but this is not a material matter as there are similar provisions within the 2014 Procedure Rules. In summary it was submitted that the judge had acted unfairly in refusing the adjournment.
11. It was contended that the appellant had been unwell on the day of the hearing and had visited a walk in medical centre as he was unable to arrange an appointment with his own GP and required medication urgently. The appellant's representative had made the judge aware of this. The solicitors had written to the FTT on 3 September 2018 enclosing a prescription that the appellant had received on 30 August 2018. It was accepted this was not within the 24 hours stipulated by the judge but it was explained that the appellant had not been fit enough to attend his solicitors on 31 August 2018.
12. In addition the judge was made aware that the solicitors had only been instructed on 10 August 2018 and they needed further time to prepare the case. The appellant's previous representatives had been the subject of an intervention by the Solicitors Regulation Authority and it was submitted that this intervention had occurred at around the time of the appellant's initial hearing on 11 May 2018. It was submitted that the previous adjournment was not the fault of the appellant and he suffered anxiety and stress in appointing new solicitors having paid substantial fees to his previous solicitors.
13. It was further submitted that the judge had erred by not having sought further information from the Family Court if there was any doubt as to the appellant's relationship with his child. It was also submitted that the judge had erred by not considering the best interests of the appellant's British child.
14. Permission to appeal was granted by Judge Bird who found it arguable that the judge had acted unfairly in refusing to adjourn the appeal and proceeding in the appellant's absence.

15. Following the grant of permission the respondent lodged a response pursuant to rule 24 of the Upper Tribunal Procedure Rules 2008. In summary it was contended that the judge had not acted unfairly. The grounds seeking permission to appeal had failed to particularise what illness the appellant was suffering from on the day of the hearing. The respondent's view was that the applications to adjourn 'was a deliberate attempt by the appellant to stall his hearing.'

The Upper Tribunal Hearing

16. Mrs Ahmad, behalf of the appellant, relied upon the grounds contained within the application for permission to appeal and explained that the appellant did not have access to his file of papers from his previous solicitors until the end of July 2018.
17. Mrs Ahmad explained that an application to adjourn had been submitted to the FTT by letter dated 17 August 2018. I explained that there was no letter from Mrs Ahmad's firm requesting an adjournment on the Tribunal file. I obtained a computerised case history and there was no record of any adjournment request being received on behalf of the appellant, and I advised Mrs Ahmad of this. I received a copy of the letter dated 17 August 2018.
18. Mrs Ahmad pointed out that her firm had sent a letter to the FTT dated 3 September 2018 enclosing a prescription dated 30 August 2018, explaining that the appellant had been unwell on the hearing date, suffering from 'excessive vomiting and diarrhoea along with a heavy flu and headaches which came to light on the date of his hearing.' I advised Mrs Ahmad that this letter was on the Tribunal file and was date stamped as having been received on 2 October 2018. Mrs Ahmad also submitted a letter dated 6 September 2017 from the Home Office to the appellant's previous solicitors confirming that the Home Office had received from the appellant a letter from his former partner confirming that he had regular contact with his son together with a copy of an undated letter from the appellant's former partner confirming contact between the appellant and his son.
19. On behalf of the respondent Mr Diwnycz relied upon the rule 24 response in contending that the judge had not materially erred in law.

My Conclusions and Reasons

20. The issue that I have to decide is whether the judge acted unfairly in refusing the adjournment request and proceeding to decide the appeal in the absence of the appellant.
21. The principles to be applied when considering an adjournment request are set out in Nwaigwe [2014] UKUT 00418 (IAC). Where an adjournment refusal is challenged on fairness grounds it is important to recognise that the question for the Upper Tribunal is not whether the FTT acted

reasonably, but the test to be applied is that of fairness, and whether there was any deprivation of the affected party's right to a fair hearing.

22. The appeal was lodged on 23 October 2017. The appellant's initial solicitors were the subject of an intervention by the SRA on 18 April 2018. The appellant's first hearing before the FTT was on the 11 May 2018. The appellant attended that hearing without legal representation and requested an adjournment to obtain legal representation. That application was granted and I accept that the appellant was advised by the judge to obtain legal representation as soon as possible.
23. On 11 May 2018 the FTT issued a notice confirming that the next hearing will take place on 30 August 2018. I accept that the appellant did not instruct his current solicitors until 10 August 2018, approximately three months after his first hearing was adjourned, and approximately four months after the SRA intervention into his previous solicitors.
24. I find the FTT did not receive the letter dated 17 August 2018 from the appellant's current solicitors requested an adjournment. There is no evidence on the file that the letter was received and the computerised case history makes no reference to an adjournment application being received after the initial hearing on 11 May 2018 and the second hearing on 30 August 2018. If the letter had been received the FTT would have made a decision on the adjournment application and this would be evident from the file and the computerised case history.
25. I find that there was no medical evidence produced to the judge to indicate the nature of the appellant's illness which prevented him from attending the hearing on 30 August 2018. The judge prepared the decision on 14 September 2018 and the FTT had not received any medical evidence on behalf of the appellant at that time. I am satisfied that the letter from the appellant's current solicitors dated 3 September 2018 was not received by the FTT until 2 October 2018. I make this finding for two reasons. Firstly the original letter is on file and is date stamped as having been received by the FTT on 2 October 2018. Secondly the computerised case history discloses an entry made on 2 October 2018 recording the receipt of the letter dated 3 September 2018.
26. Therefore the judge did not have any medical evidence to confirm that the appellant was not well enough to attend the hearing on 30 August 2018. The letter dated 3 September 2018, which was not provided to the judge, encloses a prescription for cyclizine tablets, which are used to prevent nausea and vomiting. There is no other medical evidence.
27. In addition to the absence of the appellant, for which there was no satisfactory explanation the judge noted that no bundle of documents had been prepared on behalf of the appellant, there was no witness statement from the appellant, and no witness statement from his former partner.

28. The judge acknowledged at paragraph 4 that the appellant had submitted a photograph of himself and his son and the letter from his former partner and noted at paragraph 15 that the Home Office bundle contained a statutory declaration from the former partner dated 22 October 2017 but there is no more recent evidence. The judge considered the best interests of the child noting that he is British and he lives with his mother who is also British and both would remain in the UK.
29. I conclude that the judge did not act unfairly and her refusal to adjourn the hearing did not deprive the appellant of a right to a fair hearing. The appellant had been given ample opportunity to prepare for the hearing. No satisfactory explanation was given for his delay in instructing solicitors. No satisfactory explanation has been given as to why a bundle of documents was not prepared. The claim that the appellant was not ready for the hearing is contradicted by the letter from the solicitors dated 3 September 2018 in which it is confirmed at paragraph 3 that the appellant attended all his consultations with his solicitors 'and was prepared for his hearing and that he had obtained very strong evidence in the form of photographs documenting his family life, which was the basis of his appeal.'
30. The judge was entitled to note the lack of any medical evidence to support the contention that the appellant was so unwell on 30 August 2018 that he could not attend the hearing. Even when the prescription was produced to the FTT on 2 October 2018, that without more does not demonstrate that the appellant was so unwell that he could not attend the hearing.
31. I find no material error of law and the decision of the FTT stands.

Notice of Decision

The decision of the FTT does not disclose a material error of law. The appeal is dismissed.

There has been no request for anonymity and no anonymity direction is made.

Signed



Date 13 February 2019

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed 

Date 13 February 2019

Deputy Upper Tribunal Judge M A Hall