



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

Appeal Number: PA/06439/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 26 April 2019
Decision prepared 26 April 2019**

**Decision & Reasons Promulgated
On 9 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

**SKA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Haque, a Legal Representative instructed by Diplock Solicitors

For the Respondent: Mrs L Kenny, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals, with permission, against a decision of Judge of the First-tier Tribunal Moore, who in a determination promulgated on 14 February 2019 dismissed the appellant's appeal against a decision of the Secretary of State to refuse to grant asylum.
2. The sole issue before me is whether or not the judge was correct to refuse to grant an application made by the appellant's representative for an adjournment of the hearing and therefore to go on and determine the

appeal without the evidence of the appellant. The application for an adjournment had been made by the appellant's representative on the basis that on the day of hearing the appellant's wife, who was 28 weeks pregnant, had fallen and hurt her back and the appellant had had to go with her to hospital.

3. The judge refused the application on the basis that the appeal had been adjourned on two previous occasions. On the first occasion, the appeal was adjourned because the appellant was ill and the judge hearing the appeal, having taken into account the medical certificate, adjourned the appeal. On the second occasion, the appellant had attended but the appeal had to be adjourned because it appeared that he could not understand the interpreter. Judge Moore made it clear that he was refusing the application made by the appellant's representative because of the two previous adjournments, but he did offer to put back the hearing. There was no medical certificate produced at the hearing. The appellant's representative then withdrew.
4. I consider that the judge made an error of law in not adjourning the appeal. It is clear that judges had on the two previous occasions considered that the appropriate course of action was to adjourn the appeals. I consider that each application for an adjournment should be considered on its own merits. The reasons given by the appellant's representative at the hearing were clear and understandable. It was surely appropriate that the appellant should accompany his wife to hospital, given that she had hurt her back when falling in the snow, and that he should remain in hospital with her until she was seen. There is on the file, although of course it was not before the judge, clear medical evidence showing that what the appellant's representative told the judge was true - that the appellant's wife had had to attend hospital and that it was appropriate that given that she was 28 weeks pregnant that he should attend with her.
5. I consider that in these circumstances it would only be in the interests of a fair disposal of the appeal that it should have been adjourned and I consider that not to do so was a material error of law. I therefore set aside the decision of the First-tier Judge and direct that the appeal proceed to a hearing afresh on all issues.

Decision

The decision of the Judge in the First-tier is set aside

Directions

This appeal is remitted to the First-tier Tribunal at Taylor House. Bengali interpreter required. Time estimate three hours.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed: 

Date: 5 May 2019

Deputy Upper Tribunal Judge McGeachy