



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13801/2018

THE IMMIGRATION ACTS

Heard at Field House
On 9th April 2019

Decision & Reasons Promulgated
On 25th April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

LCNPMA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Basharat, Counsel

For the Respondent: Ms S Jones, Home Office Presenting Officer

DECISION AND REASONS

1. The Respondent refused the application for asylum or ancillary protection on 30 November 2018. The Appellant's appeal against this was dismissed by Judge Maka following a hearing on 16 January 2019.
2. Permission to appeal was granted by Judge Ford on 2 January 2019 in the following terms;

"The Appellant sought an adjournment arguing that he was waiting for essential documents to be delivered from Sri Lanka. While the Appellant's representative

may be open to criticism for behaviour including not seeking the documents earlier, instructing Counsel without ensuring that she had complete papers and generally delaying proceedings, the issue was whether the refusal of the adjournment arguably prejudiced the Appellant. It is arguable that in refusing the adjournment request the Tribunal may have erred in law.”

3. The other grounds seeking permission were not deemed to be arguable by Judge Ford. The only matter therefore before me is the question of adjournment.
4. Judge Maka considered the question of adjournment from paragraphs 7 to 19 of the decision and having noted the various submissions both ways determined as follows;

“15. I indicated having regard to the Procedure Rules including the overriding objective, my discretion and having regard to the fairness of the proceedings, I would not grant an adjournment. I determined no good reason for an adjournment application had been made. The Appellant had instructed solicitors back in 2017. At a number of places in his asylum interview he referred to documents. Indeed his solicitors said on 26 July 2017 (D1) that a warrant was shown to his parents in December 2016. This was in a letter to the Home Office after the screening interview. I was not told the Appellant’s solicitors were inexperienced in dealing with Sri Lankan cases or were unaware of the issues typically in these appeals or the need to produce supporting documents.

16. There is no mention the Appellant was awaiting documents from Sri Lanka in his grounds of appeal. I determined no good reason had been given why contact had not been made with a Sri Lankan lawyer for the best part of a year and a half or why the Appellant previously said he could not obtain anything as he had been disowned but was able to do so now. No explanation, why an arrest warrant mentioned in the screening interview, had not been provided since July 2017. The Appellant knew other people beyond his family and had many friends in Sri Lanka. I was given no explanation why Counsel could not have been instructed earlier or a conference held after refusal on 30 November 2018. I do not accept the notice of hearing sent on 12 December 2018 was not received until after the New Year. Even if I am wrong on this and the Appellant received it late, his Solicitors did not say they did not receive it.

17. ... I am satisfied the Appellant has had ample opportunity to seek an adjournment of proceedings well in advance of today’s hearing, especially since he has had solicitors on record acting for him since 2017.

18. I considered the fairness of my decision against the complexity of the issues, the proportionality of the case and the resources of all parties including the Tribunal. The Appellant is paying privately. He has already seen Counsel, who half drafted his witness statement in conference. There was no certainty the documents (if any) would come and when. I had nothing before me, which said 3 weeks despite Counsel’s best endeavours. Even the written application said 6 weeks. Even if the documents did come, it was unclear whether they would then need to be translated and/or verified by the Appellant and then again independently by the Respondent. This would add additional costs and delay especially if there was an issue with the validity of the documents. There was no reason if I put the matter

back today, Counsel could not complete the Appellant's witness statements after taking his instructions. As far as the documents were concerned I indicated I would accept whatever was submitted on the Appellant's behalf. Even if documents were not there, this would not stop me from accepting the Appellant's case if I were to find him to be credible."

5. At the hearing before me Ms Jones essentially argued that the refusal of the adjournment was a matter that was open to the judge and did not lead to arguable unfairness for the reasons given in the decision by the judge. Ms Basharat argued that it did.
6. The procedure rules are contained in the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, Rule 4. The adjournment guidance is contained in the Presidential Guidance, Note number 1 of 2014 and in particular from [7] to [9].
7. Judge Maka considered the various factors in the appeal. It boils down to on the one hand more time being needed because evidence is outside the Appellant's control, as against on the other hand not adjourning at the earliest opportunity and adequate time having already been given to prepare the appeal.
8. I accept that criticism can be made of the Appellant's representatives in this case. However, the Appellant's representatives are not the one who fear persecution upon return to Sri Lanka.
9. There was plainly adequate time of some 18 months for the Appellant and his representatives to get the documentation necessary to support his appeal. However, in my judgement it would have been only fair to adjourn the proceedings because there were documents allegedly available in a short period of time that could assist the Tribunal in discharging its duties.
10. In those circumstances I am satisfied that there was a material error of law in not adjourning the proceedings and that bearing in mind what both representatives have said, that goes to the heart of the appeal. I therefore set aside the decision and remit the matter to the First-tier Tribunal for a de novo hearing. The matter will be heard at Hatton Cross but not by Judge Maka. Any consequential directions will be issued by the First-tier Tribunal in due course. It should be obvious that the documentation that is said to be crucial must be supplied expeditiously without waiting for a hearing date.

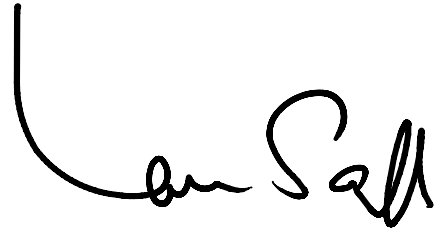
Deputy Upper Tribunal Judge Saffer
17 April 2019



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

11. 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. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Deputy Upper Tribunal Judge Saffer
17 April 2019



Fee/Costs

I make no fee or costs award as the matter is ongoing.

Deputy Upper Tribunal Judge Saffer
17 April 2019

