



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

Appeal
IA/33976/2013

THE IMMIGRATION ACTS

Heard at: Manchester

On: 4th August 2014

**Determination
Promulgated**

On: 10th October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

MAZLOOM BEGUM

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

For the Appellant: Mr Ahmad, Marks and Marks Solicitors
For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Pakistan date of birth 3rd February 1950. She appeals with permission¹ the decision of First-tier Tribunal Judge Davies² to dismiss her appeal against the Respondent's decision to refuse to vary her leave to remain and to remove her from the United Kingdom pursuant to s47 of the Immigration Asylum and

¹ Permission granted by First-tier Tribunal Judge Osbourne on the 16th January 2014

² Determination promulgated on the 19th December 2013

Nationality Act 2006³.

2. The Appellant had entered the UK as a visitor on the 3rd January 2013 and on the 26th June 2013 had sought to vary that status to being a dependent relative of her son, a person present and settled in the UK. The Rules do not permit such a switch and so when the appeal came before Judge Davies the parties agreed that the only appeal route open to the Appellant was human rights. Her grounds of appeal indicate that she wished to rely on Article 8 ECHR. Judge Davies considered the facts that would have been applicable had this been an application under the Rules. He found that the Appellant had no particular dependency on her adult children in the UK. He did not accept that there were any difficulties in the Appellant returning to live in her house in Pakistan and did not find it credible that her brother, with whom she had previously been living, would suddenly withdraw from that arrangement, going off to live with his children. The evidence indicated that the Appellant had diabetes and high blood pressure but she had been paying for her own medication in Pakistan using rental income. On those facts the situation faced by the Appellant upon her return to Pakistan fell well short of Article 3. In respect of Article 8 there was no reason why the Appellant could not go back and the decision was in all respects proportionate; it was apparent from her actions that the Appellant had abused the immigration system by making the application for leave to enter as a visitor when she had not intention of returning to Pakistan at the end of her trip. The appeal was accordingly dismissed.
3. At paragraphs 12-14 the determination records that the Appellant was unrepresented before the First-tier Tribunal. Her solicitors had faxed the Tribunal on the morning of the hearing explaining that they had confused the dates of the hearing and had booked Counsel for a different day. They were unable to find alternative Counsel and requested that the hearing be adjourned. The application was refused. Judge Davies did not consider that the hearing would be unable to fairly proceed. The Appellant was present, and her representatives had known for a long time that this was the hearing date.
4. It is that refusal to adjourn that is the focus of the grounds of appeal. It is submitted that the Appellant was substantially prejudiced by the absence of her Counsel. In particular it is said that:
 - i) it was not her fault;
 - ii) she was denied the opportunity to properly plead her case;
 - iii) she was asked very few questions, the hearing only lasting 10-15 minutes;
 - iv) the Tribunal did nothing to assist her in giving her evidence;
 - v) she was "scared, nervous and intimidated" having no-one to

³ Reasons for refusal letter dated 7th August 2013, decision served on the 9th August 2013.

- represent her interests;
 - vi) her family members who were present were denied an opportunity to give evidence and explain the Appellant's situation in greater detail;
 - vii) the Judge did not have the bundle before him so "could not fully appreciate the appellant's dire circumstances"
5. It is further submitted that the determination fails to provide adequate reasons why the Appellant's removal is proportionate.

Error of Law

6. Rule 21 of the Asylum and Immigration Tribunal (Procedure Rules) 2005 stipulates that the Tribunal must not adjourn an appeal upon application by a party unless it is satisfied that the appeal cannot otherwise be justly determined. There are a number of considerations to take into account when assessing whether the case can justly proceed. These include: (i) The importance of the proceedings and their likely consequences to the party seeking the adjournment; (ii) the risk of the party being prejudiced in the conduct of the proceedings if the application were refused; (iii) the risk of prejudice or other disadvantage to the other party if the adjournment were granted; (iv) the convenience of the court; (v) the interests of justice generally and the efficient despatch of Court business; (vi) the desirability of not delaying future litigants by adjourning early and thus leaving the court empty; and (vii) the extent to which the party applying for the adjournment has been responsible for creating the difficulty which has led to the application⁴.
7. In this case the First-tier Tribunal has expressly considered (vii). It is apparent from paragraphs 12-14 that Judge Davies found the blame for Counsel's absence to lie at the door of the Appellant's representatives. The faxed adjournment request simply states that they have been unable to arrange alternative counsel. It gives no more detail. It does not for instance explain why no-one from their offices could attend, or what chambers had been contacted. In those circumstances Judge Davies was entitled to take a dim view of the reason behind the request. It is implicit in his reasoning that he has given substantial weight to (v), (vi) and possibly (iii), and his overall reasoning would suggest that he did not consider there to be any significant prejudice to the Appellant in proceeding, since she herself was present: (ii). It does not appear that he specifically addressed how important these proceedings were to the Appellant, but that is arguably a matter which was self-evident.
8. The composite question was whether or not this appeal could only be

⁴ See for instance *Ex parte Martin* [1994] Imm AR 172.

justly disposed of by adjourning it. As Mr Harrison points out, the answer lay in the substantive matter of the appeal itself. The grounds do not contend that there were any particularly weighty matters of law in this appeal, but submit that the unrepresented Appellant was not able to put forward her evidence as well as she would have done had she been represented. In particular it is contended that her family members were deprived of an opportunity to speak to the “dire circumstances” faced by the Appellant.

9. I have reviewed the bundle submitted on behalf of the Appellant. Contrary to the assertion in the grounds the Judge did have this before him and did give it his full attention: this is expressly noted in the determination at paragraph 11. That bundle was served late, but the Judge had it. It contains detailed statements from the Appellant, her son, daughter-in-law and letters from some of the Appellant’s grandchildren. Their evidence *inter alia* confirms that the Appellant owns her own home in Rawalpindi from which she receives a rental income, has a number of siblings in Pakistan with whom she has a good relationships and that although she is unwell she has been managing her diabetes and high blood pressure with medication that she purchases herself. It explains that the Appellant has a number of close family members in the UK including grandchildren, her son and daughters. She misses them a lot when she is not here and prior to her last entry to the UK was feeling “a bit depressed”. The crux of the Appellant’s case appears to be that her brother has decided to move to live with his family in Islamabad, and that the security situation in Pakistan is now such that she cannot be expected to live on her own or to hire help in the house as this would be “risky”. The First-tier Tribunal has taken all of that evidence into account. I am not told what if any evidence the witnesses could have added to their detailed statements, nor if there was substantive further information, why that was not in the witness statements in accordance with directions. The First-tier Tribunal was not disadvantaged by the absence of Counsel, nor materially was the Appellant, since her solicitor had already drafted these very detailed statements setting out her case. The grounds of appeal assert that the hearing was very short. This would indicate that there was next to no cross-examination for Counsel to shield her from. She may have felt confused or lacking in confidence on the day, but since her case was fully set out in the bundle this did not prejudice her. Having had regard to the evidence presented, and to the grounds, I am not satisfied that there was any material unfairness in the refusal to adjourn. All the relevant facts were considered.
10. In respect of the reasons-challenge in the second ground of appeal I find the reasoning in the determination to be adequate. The facts of this case, taken at their highest, do not amount to “dire circumstances” as it is expressed in the grounds. This is a 63 year-old lady of independent means who has moderate health problems. She

is not in need of care. She understandably misses her family, but this is not a sufficiently compelling reason to warrant a grant of leave to remain on human rights grounds. Her brother may well wish to spend more time with his family but since Islamabad is right next to Rawalpindi there is no difficulty in maintaining regular contact. There was no objective evidence to support the contention that the Appellant would in any way be in danger in Pakistan, in particular no evidential support for the assertion that the family would be unable to hire domestic help for her because this would be “risky”.

Decisions

11. The determination of the First-tier Tribunal does not contain an error of law and it is upheld.

Deputy Upper Tribunal Judge Bruce
30th September 2014