Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/35288/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 17th October 2014	**On 11th November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

KARVNASREE GILLIPALLI
(ANONYMITY NOT DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No appearance
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India who was born on the 31st July 1975. She appeals against the decision of First-tier Tribunal Judge Pears who, on the 2nd July 2014, dismissed the appeal against refusal of her application for limited discretionary leave to remain for the purpose of receiving medical treatment in the United Kingdom. The appellant brings her appeal on the ground that the First-tier Tribunal acted unfairly by refusing her application

for an adjournment, made on the 26th June 2013, when her appeal was listed for hearing.

2. The relevant history of the proceedings, together with the Tribunal's reasons for refusing to accede to the adjournment applicaiton, can be found at paragraphs 6 to 10 of the determination –

> 6. On 25th June 2014 there were two faxes from Linga & Co, one apparently sent at 2.46pm saying the Appellant wishes to represent herself and that she will not be represented by counsel or a representative from Linga & Co. Subsequently at 5.57pm there was sent an unsigned copy of a witness statement purportedly being a statement from the Appellant raising issues of a fundamentally different nature to those raised before and which I set out below.
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> 7. However before I come to that, on the morning of the hearing of the appeal hearing, at 9.08 there was a fax from Linga & Co saying "we understand that our client has been calling us outside office hours, to inform us that she is felling unwell and that she will be attending the Accidents and Emergency department". They say they do not know the diagnosis or the condition or whether she has been admitted as in patient but she advised them that she will not be able to attend the hearing and they sought an adjournment in the interests of justice until such time as the client was fit to attend. They do not propose a length for the adjournment.
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> 8. The appeal was not reached until 14.45 and by that time there was no medical evidence faxed or any further message from Linga and Co and no indication of what the Appellant was suffering from or even which hospital she attended.
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> 9. The Respondent's representative opposed the application.
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> 10. I considered the application in accordance with paragraph 19 and paragraph 21 of the Asylum and Immigration Tribunal (Procedure) Rules 2005. IN relation to the request for an adjournment the party applying for an adjournment must produce evidence of any factor matter relied upon in support of the application – paragraph 21(1)(c). The Appellant has failed to produce any evidence of why she could not attend or from what she was suffering. Further a tribunal must not adjourn a hearing of an appeal unless satisfied that the appeal cannot otherwise be justly determined – paragraph 21(2). The Appellant has submitted her statement and I am far from satisfied that he appeal cannot be justly determined. Turning to paragraph 19 I *may* hear an appeal in the absence of a party provided the party has been given notice of the date, time and place of hearing and there is no good reason for such absence. I find she was given notice and there is no good reason and in my discretion it was appropriate to proceed.

3. The judge then considered the appeal substantively. He noted that whilst the appellant had submitted medical appointment letters, she had nevertheless failed to provide any medical evidence "about the results, her condition or any prognosis" [paragraph 14]. He also noted the contents of an unsigned witness statement. This asserted that the appellant had been widowed in 2002 and that her family believed her subsequent conduct was

incompatible with her widowed status [paragraph 15]. She feared that if she returned to India she would be pressured by her parents into re-marrying against her wishes [paragraph 19]. In explaining the reasons for his decision, the judge again noted the absence of any "independent or corroborative or medical evidence to support any of her claims [paragraph 22]. Even if her claims were accepted, however, they did not amount to grounds for international protection [paragraph 23]. The judge therefore concluded that the respondent had applied the Immigration Rules correctly, and that the appellant had failed to show that there were any arguably exceptional circumstances that merited consideration of her application outside the Rules.

4. The grounds of appeal to the Upper Tribunal may be summarised as follows –

   (i) The appellant was suffering from severe pains which had (a) come on suddenly, (b) resulted in her admission to hospital and (c) prevented her from providing evidence to the Tribunal in support of her adjournment request.

   (ii) The judge failed "to assess in its proper substantive form whether it would be reasonable for the Applicant to relocate to India" [paragraph 6].

   (iii) "In any event, discretion could have been exercised in the Applicant's favour given her long residence in this country" [paragraph 8].

5. Permission to appeal to the Upper Tribunal was granted in the following brief terms –

> In light of the Appellant's admission to hospital and the circumstances appertaining to that an arguable error of law has arisen in relation to the refusal of an adjournment.

   I take the above to signify that the appellant has been granted permission to argue only the first of the grounds that I summarised in the previous paragraph.

6. Before turning to consider the merits of this ground, it is perhaps pertinent to note that appellant also applied, by way of a letter received on the previous day, to adjourn the hearing of her appeal in the Upper Tribunal. Upper Tribunal Judge P Lane refused that application in the following terms –

> You have not supplied any medical note or other reliable evidence to show that your client will be unfit to attend tomorrow. Even if she is not present, there is no reason why the Tribunal should not proceed to hear submissions from you and the Home Office on whether there is an error of law in the determination, such that the determination should be set aside.

7. A decision will only be set aside on the basis of procedural impropriety where an application to adjourn has been refused unfairly, or where the Tribunal has failed to take account of material matters or has taken account of immaterial matters [see Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC)]. The appellant has now submitted medical notes that were not before the First-tier Tribunal when it made its decision. The Tribunal cannot therefore be said to have erred by failing to take them into account. The notes are in any event not particularly informative. They merely indicate that the appellant was admitted to the Princess Royal hospital on the day of the hearing, was diagnosed as suffering from PF (?) Pain, and was prescribed Paracetamol and Ibuprofen. Tellingly, they do not confirm the appellant's claim that she was unfit to attend the hearing. Accordingly, the Tribunal did not err by refusing the appellant's request for an adjournment.

8. The appellant has in any event failed to show that the outcome of her appeal would have been any different if the Tribunal had acceded to her application to adjourn the hearing. Even now, she has failed to adduce any further evidence in support of her claims. As the First-tier Tribunal judge correctly observed, the extremely limited evidence that the appellant is suffering from a medical condition for which she has been receiving treatment in the United Kingdom does not begin to establish that her removal would result in the potential operation of either Article 3 or Article 8 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms. Equally, her claimed fear of returning to India - taken at its highest - falls very far short of establishing that she has a well founded fear of suffering harm on return to India so as require the United Kingdom to grant her surrogate protection. In arriving at the latter conclusion, I have taken account of the arguments that the appellant put forward in her grounds of appeal to the Upper Tribunal in respect of which she was not granted permission to appeal. As a result of doing so, I am satisfied that the refusal of the application to adjourn did not deprive the appellant of a fair hearing of her appeal.

Notice of Decision

9. The appeal is dismissed.

Anonymity not directed.

Signed Date

David Kelly
Deputy Judge of the Upper Tribunal **10th November 2014**