



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

Appeal Number: AA/02855/2015

**THE IMMIGRATION ACTS**

**Heard at : Field House  
On : 22 October 2015**

**Determination Promulgated  
On:26 October 2015**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**REETA MARY FRANCES**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr N Paramjorthy, instructed by DV Solicitors

For the Respondent: Ms E Savage, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a national of Sri Lanka born on 6 November 1982. She entered the United Kingdom in September 2010 and was granted successive periods of leave to remain as a Tier 4 student until 28 April 2014. Her last period of leave was curtailed to 3 February 2014 and a further application for leave to remain as a Tier 4 student was refused on 17 September 2014. The appellant applied for asylum in December 2014. Her claim was refused on 6 February 2015 and a removal decision was made the same day.

2. The appellant appealed against that decision. Her appeal came before First-tier Tribunal Gibbs on 23 June 2015. Mr Paramjorthy appeared at the appeal hearing on behalf of the appellant and requested an adjournment of the proceedings on the basis that the appellant was too unwell to attend and was attending St George's Hospital Accident and Emergency (A&E). He did not have any evidence to support that and said that he could not produce evidence that day as the A&E was so busy. He explained that no appeal bundle had been submitted because the appellant's representatives had been unable to take instructions from her. The adjournment request was opposed by the respondent's representative.

3. Judge Gibbs considered that if it was indeed the case that the appellant was genuinely unable to attend due to illness, it would not be fair to proceed in her absence. However she was concerned by the fact that there was no medical evidence before her and that two adjournment requests had previously been made, prior to the hearing, by the appellant's representatives to enable them to obtain further documents and both requests had been refused. She therefore advised the parties that she would give the appellant an opportunity to present evidence to her that she was unfit to attend the hearing by 11am on 26 June 2015 and that if such evidence was produced she would adjourn the hearing. Otherwise, she would decide the appeal in the appellant's absence.

4. In a decision promulgated on 3 July 2015, Judge Gibbs dismissed the appellant's appeal on all grounds. She confirmed that no documentary evidence had been produced to the Tribunal and she was therefore considering the appeal in the absence of the appellant under Rule 28 of The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. She went on to make findings on the appellant's case, concluding that the claim was not a credible one and that the appellant would not be at risk on return to Sri Lanka.

5. Permission was sought on behalf of the appellant to appeal to the Upper Tribunal, on grounds of procedural unfairness. It was asserted in the grounds that the appellant had submitted medical evidence to the Tribunal before 11am on 26 June 2015 substantiating her claim to have been unfit to attend the hearing on 23 June 2015. Such evidence had been faxed to the Tribunal at 9.55am on 26 June 2015.

6. Permission to appeal was granted on 29 July 2015 on the grounds raised.

### **Appeal hearing in the Upper Tribunal**

7. At the hearing I had before me a fax from the appellant's representatives stamped as sent at 9.55 am on 26 June 2015 enclosing a letter dated 25 June 2015 from the appellant's GP together with the appellant's medical records.

8. Mr Paramjorthy appeared before me and agreed that the evidence did not specifically address the issue of the appellant's unfitness to attend the hearing on 23 June 2015, but he asked me to accept that it confirmed the appellant's history of medical problems. His instructions were that the appellant had seen

her GP on 22 June 2015 and had undergone blood tests. She had attended at Kingston A&E on the morning of 23 June 2015 and was advised by the triage nurse that she would have to have further blood tests done and was to go back to her GP. Her GP told her that the blood test results would be available on 25 June 2015. Mr Paramjorthy advised me that the appellant was not admitted to the hospital. The hospital in question was Kingston hospital and not St George's, as he had previously been informed. He asked me to conclude, on the basis of the medical records, that it was reasonably likely that the appellant was unwell on the date of the hearing and to therefore set aside the judge's decision.

9. Ms Savage opposed the request on the basis that there was no evidence that the appellant had attended at A&E and that the GP's letter did not explain why she had been unable to attend the hearing on 2 June 2015.

10. Mr Paramjorthy did not seek to respond.

11. I advised the parties that I did not find any error of law in the judge's decision.

### **Consideration and findings.**

12. It is plain that the documentary evidence produced was faxed to the Tribunal prior to the deadline given by the judge. However clearly it had not made its way to her file by the time she determined the appeal. It is relevant to note that it was sent only an hour before the deadline. The judge cannot therefore be criticised for going on to determine the appeal as she did. Nevertheless, had the documents confirmed the appellant's attendance at A&E and explained her inability to attend the appeal hearing, the grounds raising procedural unfairness would have merit.

13. However, the documentary evidence produced on behalf of the appellant does not in any way provide an explanation for her absence on 23 June 2015. There is nothing to confirm that she attended at A&E. The letter from her GP, dated 25 June 2015, confirms simply that she had recently been seen with a three month history of dizziness and that blood tests undertaken had shown no obvious cause. The letter states that the appellant had not been followed up since then and that she was not currently prescribed any medications from the surgery. The letter also refers to the medical notes enclosed. There is nothing in the GP's letter or the medical notes to show that the appellant was unfit or unwell on the date of the hearing. It cannot be said that the appellant has not been given a full opportunity to provide such evidence. She has had a further four months to produce the evidence to support her appeal to the Upper Tribunal, but has failed to do so. I cannot accept that the medical evidence provided is sufficient to lead to any reasonable assumption that she was not well enough to attend the hearing.

14. Accordingly, in the absence of any proper explanation for the appellant's absence, and given the concerns about the adjournment request having followed two previous unsuccessful requests, the judge properly went on to

determine the appeal in the appellant's absence and there was no procedural unfairness in her having done so.

15. The judge's findings on the merits of the appellant's claim have not been challenged. It seems to me that the judge gave full and proper consideration to all relevant matters and was entitled to make the adverse findings that she did and to reach the conclusion that she did in regard to risk on return.

16. For all those reasons I find no errors of law in the judge's decision.

**DECISION**

17. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed

Date

Upper Tribunal Judge Kebede