



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

Appeal Number: IA/43975/2014

THE IMMIGRATION ACTS

**Heard at Field House, London
on 27 October 2015**

**Decision and Reasons
promulgated
On 6 November 2015**

Before

**The President, The Hon. Mr Justice McCloskey and
Upper Tribunal Judge Canavan**

Between

KARAM KAUR KUNDI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

Appellant:

Sponsors

Respondent:

T Wilding, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

INTRODUCTION

1. This is an appeal with permission against the decision of the First-tier Tribunal ("*FtT*") dated 12 May 2015. The original appeal was against the Secretary of State's refusal to grant further leave to remain to the

Appellant, Mrs Karam Kundi, who is the grandmother of the sponsors concerned, her grandchildren, each of whom has attended this appeal hearing today.

2. There was no appearance on behalf of the Appellant at the first hearing. In [23] the judge recorded that the Appellant had failed to file any evidence with regard to her medical conditions. This can be linked to the grounds of appeal. The judge then referred to a one page letter from a medical practitioner dated 09 October 2014. This letter evidently detailed medication being taken and ongoing care. I note the reference to the Warfarin clinic so, obviously, one of the conditions was the deep venous thrombosis. The judge then said there was no evidence to show the Appellant is incapable of travel or that treatment is not available to her in Canada.
3. As a result of the application for permission to appeal the Upper Tribunal is now aware, thanks to the meticulous efforts of the Home Office Presenting Officer, Mr Wilding, of the sequence of events which, in broad terms, spans the period 27 April 2015 - 02 June 2015. We need not rehearse the details.
4. There are two aspects to the appeal. One is that evidence that was available, which the sponsors attempted to bring to the attention of the Tribunal, was not considered. The second is that the hearing proceeded without an adjournment. Now no one is at fault here, but in questions of fair hearing fault is irrelevant. Equally irrelevant is the criterion of reasonableness. This Tribunal has made that clear in a series of decisions, beginning with the case of MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), the Upper Tribunal conducts a detached, clinical review of the fairness of the hearing at first instance.
5. In circumstances where medical evidence was sent approximately two weeks before the hearing began and was sent to one of the parties but was not brought to the attention of the Tribunal and was obviously material to the issues, the unavoidable conclusion is that the hearing at first instance was unfair.
6. We comment briefly on the question of adjournment. It is frequently said that the question of whether an adjournment should have been granted entails a consideration of whether the first instance judge or tribunal acted reasonably. That is a fatally flawed proposition in law. Fairness is the sole criterion: see the Upper Tribunal's decision in Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC). However, given that we have allowed the appeal on the first of the grounds that we have identified it is unnecessary to proceed any further on the question of the adjournment.

7. It follows that we set aside the decision of the FtT. We shall remit, given the nature of the error of law which has been identified. It will be considered by a differently constituted FtT.

[Ladies, we are acceding to the appeal. What that means is the case is being remitted for a further, new hearing in the FtT, before a different judge. You will have to be very careful next time to ensure that all the medical evidence is sent to the Tribunal, copy to the Secretary of State of course. The primary recipient must be the Tribunal].

Seamus McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Dated: 29 October 2015