Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/46829/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 2 June 2015	**On 5 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

HOQUE A K M NAZMUL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant's appeal against decisions to refuse to vary his leave and to remove him from the United Kingdom was dismissed by First-tier Tribunal Judge Petherbridge ("the judge") in a decision promulgated on 29 July

2014. The appellant was given leave as a student in June 2009, valid until 28 October 20112. Shortly before expiry, he applied to vary his leave, seeking to remain outside the Immigration Rules ("the rules").

2. At the hearing before the judge, the appellant was represented by counsel. The judge was told that a friend of the appellant had telephoned to say that the appellant was in hospital and would be unable to attend the hearing. In due course, a note was obtained from St Bartholomew's NHS Trust stating that the appellant had attended an emergency department with "abdominal pain" and received advice to "go to local hospital if pain worsens". The appellant's counsel applied for an adjournment, which was opposed by the Secretary of State's representative. The judge refused the application, observing that there was nothing in the note suggesting that the appellant was unfit to attend the hearing and that he had been able to travel from his home to the hospital in Whitechapel. The appellant's counsel then stated that the appeal might proceed and be determined on the basis of the documentary evidence before the judge.

3. The judge took into account a witness statement made by the appellant shortly before the hearing and medical evidence, which included evidence showing that the appellant had been assaulted in September 2009 and received a sum in compensation from the Criminal Injuries Compensation Authority. The appellant returned to Bangladesh some five months after the incident, obtained medical evidence there regarding his injury and then returned to the United Kingdom. In his witness statement, the appellant referred to ongoing treatment for his injured shoulder and stated that he needed leave to remain here so that he could continue with his studies although he was not well enough at present to do so.

4. The judge accepted that the appellant had suffered a shoulder injury but found that there was no up-to-date evidence regarding the extent of it. He also found that there was no evidence that the appellant suffered from mental health problems or that he would be unable to receive treatment in this context on return to Bangladesh. The appellant's future plans appeared unclear. He accepted that the appellant had established a private life in the United Kingdom since his arrival in 2005 and that he had spent some time since then in Bangladesh. There was nothing to suggest that the appellant had no ties to the country of his nationality and his parents still lived there.

5. The judge found that the requirements of the rules, including those in paragraph 276ADE, were simply not met. In a brief assessment of the merits of an Article 8 claim outside the rules, the judge drew on his earlier findings regarding the limited leave the appellant has had in the United Kingdom, the uncertainty of the evidence regarding his plans and the extent of his remaining ties to Bangladesh. He concluded that removal of the appellant would not be disproportionate.

6. An application for permission to appeal was made, on the basis that the judge erred in failing to adjourn the hearing. Permission was granted on 13 April 2015. The judge granting permission found that the decision made no mention of the Asylum and Immigration Tribunal (Procedure) Rules 2005, which were in force in July 2014 when the appeal was heard, including rule 21, dealing with adjournments. Refusal of the adjournment in spite of the note sent by fax from the hospital and an apparent failure to consider the requirements of rule 21 amounted to arguable errors of law.

7. In a response, the Secretary of State opposed the appeal on the basis that the judge had directed himself appropriately and that the evidence before the First-tier Tribunal was insufficient to show success. Mr Melvin provided written submissions developing that case. The judge was entitled to find that there was insufficient evidence that the appellant was unwell and unable to attend the hearing. In any event, the judge considered the evidence before him. He was entitled to dismiss the appeal, for the reasons he gave.

The Hearing

8. There was no appearance by or on behalf of the appellant. The appeal was listed for hearing at 10 am. It was called on forty five minutes later. Enquiries revealed that no messages had been left with the administrative staff at Field House. The case management file showed that notice of the hearing was sent to the appellant and to his solicitors on 7 May 2015 at the addresses provided by them at earlier stages in the proceedings, including the recent application for permission to appeal to the Upper Tribunal. There was nothing to indicate any failure of service at all.

9. I had regard to rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008. I was satisfied that the appellant and his solicitors had each been notified of the hearing by means of postal service in early May 2015. It was also apparent that the Upper Tribunal had taken reasonable steps to notify both. I considered that it was in the interests of justice to proceed with the hearing as there was no conceivable merit in further delay.

10. Mr Melvin adopted the rule 24 response and his written submissions. The documentary evidence before the judge showed that the appellant wished to study and work here but had apparently not done so since 2009. It was difficult to see what other evidence he might have wished to adduce, had he been present, beyond the detailed witness statement made only four days before the First-tier Tribunal hearing. The judge properly considered the adjournment application and the appellant could not have hoped to succeed under the private life requirements of the rules. There was insufficient medical evidence before the Tribunal to show that treatment for his shoulder injury and any other ill health would not be available in Bangladesh. Indeed, some of the evidence he relied upon came from Bangladesh. The decision contained no material error of law.

Conclusion on Error of Law

11. I am grateful to Mr Melvin for his submissions. I conclude that no material error of law has been shown and that the decision of the First-tier Tribunal shall stand.

12. The decision is clearly reasoned and shows that the judge considered the adjournment application very carefully indeed. In the grounds, it is contended but he erred in several respects, the author indicating that the appellant's friend had sent a text rather than telephoning and that the judge had asked for evidence from the hospital that the appellant was actually there rather than indicating that he would need evidence that the appellant was so ill as to be unable to attend the hearing. The "note" referred to by the judge was in fact a document sent by fax. Where the judge indicated in the decision that the appellant's representative asked that the appeal proceed "on the papers", the submission in fact made was that if the judge was not willing to adjourn then he was "at liberty to deal with the appeal on the present evidence". The appellant had a history of "medical condition (sic) and stress related problems".

13. With respect to the author of the grounds, none of this shows a material error of law on the judge's part. Paragraphs 7 to 13 of the decision record events on the morning of the hearing and there is no material difference, I find, between the judge's summary and the account which appears in the grounds seeking permission to appeal. In the event, the evidence which emerged from the hospital was very slight and simply recorded that if the abdominal pain the appellant complained of on presentation worsened, he should go to a local hospital. The judge was entitled to find that this evidence fell short of showing that the appellant was unable to attend the hearing and to observe that he had been well enough to travel from his home to a hospital which, it seems, was not his local one.

14. The judge granting permission drew attention to rule 21 of the procedure rules in force when the appeal was heard. Although the judge makes no express mention of it, the substance of the decision shows that he had in mind rule 21(2), which provides that the Tribunal must not adjourn a hearing on the application of a party unless satisfied that the appeal cannot otherwise be justly determined.

15. The judge made a careful assessment and clearly found that the appeal could justly be determined on the day listed for hearing. He had before him a bundle of documents prepared by the appellant's solicitors shortly beforehand, which included a witness statement setting out the appellant's circumstances. On any sensible view, his case was a very weak one. He has had only limited leave, as a student. He suffered an injury in September 2009 and received treatment for it here and in

Bangladesh. He was unable to complete his studies because of illness, stress and related problems. Refusal of his application for further leave apparently caused him further stress. There was nothing in the evidence before the judge remotely suggesting that the appellant was entitled to leave under the rules and nothing to suggest any family life here or substantial private life ties.

16. Overall, the decision shows that the judge made a careful and proper assessment of the application for an adjournment and he was entitled to refuse it and to proceed with the hearing. He did not err in law in doing so.

17. No material error of law has been shown in relation to the judge's decision on the adjournment application or in relation to his assessment of the evidence before him. He has given cogent and sustainable reasons for concluding that the appeal fell to be dismissed as the appellant did not meet the requirements of the rules and had failed to show that the adverse decisions and his removal to Bangladesh would breach any of his human rights.

Notice of Decision

18. The decision of the First-tier Tribunal, containing no material error of law, shall stand.

No anonymity direction has been applied for and none is made.

Signed Date

Deputy Upper Tribunal Judge R C Campbell