



**Upper Tribunal
(Immigration and Asylum Chamber)**
OA/00223/2014

Appeal Number:

OA/00226/2014

THE IMMIGRATION ACTS

Heard at North Shields

Determination

On 8 April 2015

Promulgated

Prepared 8 April 2015

On 20 April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**MD SAID DAKAK
AMAL ALHALLAK**

Appellants

And

ENTRY CLEARANCE OFFICER BEIRUT

Respondent

Representation:

For the Appellant: Mr Saeed, Solicitor

For the Respondent: Ms Rackstraw, Home Office Presenting
Officer

DECISION AND REASONS

1. The Appellants, born on 20 November 1939 and 29 January 1949 respectively are husband and wife. Both are citizens of Syria. On 1 September 2013 they applied for a grant of entry clearance for the purpose of settlement as the dependent parents of their youngest son, who held ILR, and was employed as a doctor in the UK. Their applications were refused on 20 November 2013.

2. The Appellants' appeals were heard by First Tier Tribunal Judge AJM Baldwin at Richmond on 21 August 2014, and in a determination promulgated on 29 August 2014 those appeals were dismissed.
3. By a decision of Upper Tribunal Judge Goldstein of 23 January 2015 the Appellants were granted permission to appeal to the Upper Tribunal on the basis it was arguable the Judge had fallen into error in refusing the request made by the Appellants for an adjournment of the hearing of their appeals in order that their sponsor might attend to give evidence at that hearing.
4. The Respondent filed a Rule 24 Notice on 29 January 2014 complaining that the sponsor should not have simply assumed that an adjournment would be granted, and failed to attend the hearing. Neither party has applied for permission to rely upon further evidence pursuant to Rule 15(2A) of the Upper Tribunal Procedure Rules 2008.
5. Thus the matter comes before me.

The adjournment request

6. When the appeal was called on for hearing before the Judge, the sponsor was not present, although the Appellants were represented by Mr Tablieh of Cham Solicitors.
7. At all material times the sponsor has lived at South Shields. For reasons that are not clear the Appellants' former representatives did not request the Tribunal to list the hearing of their appeals at the hearing centre most conveniently situated for him; instead the venue requested by letter dated 18 December 2013 which accompanied the IAFT-2 forms, was London. At no point did the Appellants seek a transfer of the hearing to the North Shields hearing centre.
8. The Judge noted at paragraph 4 of the determination the history of the listing of the appeals. The salient points are these. The appeals were first listed for hearing on 24 November 2014. The Appellants' representatives responded to that notice of hearing by requesting the hearing of their appeals be expedited, and listed for early June 2014. The Tribunal acceded to that request and in consequence relisted the appeals for 13 June 2014, and notified the parties of that by notice dated 21 May 2014. The Appellants then responded to that notice on 23 May 2014 requesting an adjournment on the basis the sponsor was by now outside the UK, and would not return until 14 June 2014. The Tribunal acceded to that request, and on 28 May 2014 issued a notice to the parties informing them that the hearing was now listed for 8 August 2014.

9. On 7 August 2014 the Tribunal notified the parties that the hearing could not proceed for want of a judge, and that the appeal had been adjourned until 21 August 2014. On 8 August 2014 the Appellants sought an adjournment of the hearing listed for 21 August 2014 because the sponsor could not rearrange his work commitments and be present. A series of dates were provided in that written request, when he would be available. For reasons that are unexplained, the Tribunal did not respond to that adjournment request, although the Judge appears to have accepted (perhaps in part in the light of Mr Tablieh's fax letter to the Tribunal of 20 August) that Mr Tablieh had sought on a number of occasions to follow up the request by telephone and fax.
10. The Judge accepted that the failure of the Tribunal to respond to the request for an adjournment (and indeed the failure to respond to Mr Tablieh's attempts to chase it up) was not satisfactory. Nevertheless he took the view that the sponsor was not entitled to assume that the request would be granted, and to simply fail to attend. That rather missed the point, which was that the sponsor had stated in terms immediately upon being notified of the date of the hearing (two weeks ahead) that he could not attend, because he could not be released by his employer to do so. The Judge was therefore expecting the sponsor to do something which he had always said he was unable to do.
11. The Judge appears to have gone on to find that there was no evidence before him as to why the sponsor could not attend, and no evidence from his employer refusing to release him. The evidence that was already before the Tribunal recorded however that the sponsor was at all material times employed at an NHS hospital in an intensive care unit. It ought to be common knowledge within the judiciary that the re-arrangement of shifts within such a unit is not a simple matter, and that it is dependent upon both the goodwill, and the physical availability, of suitably qualified professional colleagues able to swap shifts, as well as the employer's permission.
12. The test posed for the appropriate approach to such circumstances is set out in Nwaigwe (adjournment: fairness) [2014] UKUT 418. It is one simple fairness. The Appellants do not need to establish that the decision was perverse, irrational, or unreasonable. Whilst the Appellants undoubtedly contributed to the listing problems by requesting a hearing in London, rather than North Shields, the Tribunal acceded to that request, and then having offered a hearing on 8 August 2014, cancelled it at the last moment. When the Tribunal notified the Appellants on 7 August 2014 of the proposed new hearing date of 21

August 2014 the sponsor's immediate response was that he would be unable to attend. His reason for being unable to do so was not a spurious one; far from it. In all the circumstances, the refusal of the adjournment sought, rendered the hearing of the appeal procedurally unfair. The Appellants had always sought an oral hearing of their appeal, and relied upon the sponsor's evidence in support of that appeal.

13. In the circumstances I am invited by both parties to consider whether or not to remit the appeal to the First Tier Tribunal for it to be reheard. In the circumstances of the appeal I am satisfied that this is the correct approach. In circumstances where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the Appellants of the opportunity for their case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 25 September 2012. Moreover the extent of the judicial fact finding exercise is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 25 September 2012.
14. Having reached that conclusion, and with the agreement of the parties I make the following directions;
 - i) The decision upon the appeals is set aside and the appeals are remitted to the First Tier Tribunal for hearing on 22 April 2015 at the North Shields Hearing Centre, with 2 hours allowed. The appeals are not to be listed before Judge AJM Baldwin. No interpreter is required.
 - ii) Any further evidence that the Appellants wish to rely upon shall be filed and served by 5pm on 15 April 2015. There is no need for the Appellants to re-serve, or re-file, the bundle of 1 April 2015.

Decision

2. The Determination promulgated on 29 August 2014 did involve the making of an error of law and accordingly the decision upon the appeal is set aside. The appeals are remitted to the First Tier Tribunal with the following directions;
 - i) The decision upon the appeals is set aside and the appeals are remitted to the First Tier Tribunal for hearing on 22 April 2015 at the North Shields Hearing Centre, with 2 hours allowed. The appeals are not to be listed before Judge AJM Baldwin. No interpreter is required.

- ii) Any further evidence that the Appellants wish to rely upon shall be filed and served by 5pm on 15 April 2015. There is no need for the Appellants to re-serve, or re-file, the bundle of 1 April 2015.

Deputy Judge of the Upper Tribunal JM Holmes
Dated 8 April 2015