



IAC-AH-SAR-V1

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

Appeal Number: AA/06581/2014

THE IMMIGRATION ACTS

**Heard at Newport
On 10 February 2016**

**Decision & Reasons
Promulgated
On 29 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**H N
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Rutherford, Counsel instructed by Migrant Law Project
(Cardiff)

For the Respondent: Mr I Richards, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Sri Lanka, date of birth [] 1984, appealed against the Respondent's decision to make removal directions on 15 August 2014. That notice was supported by a Reasons for Refusal Letter of the same date. The appeal came before First-tier Tribunal Judge Beach who on 6 April 2015 dismissed the appeal. Permission to appeal was given

by First-tier Tribunal Judge Ford on 16 June 2015. The Respondent made a Rule 24 response on 25 June 2015.

2. The first complaint that is made is that the judge was unfair in proceeding with the hearing in the light of the fact that a telephone call had been made at some point, not known, on 27 February to the customer services number of the IAC informing that the Appellant then in Plymouth was unable to attend the hearing or would not be attending the hearing. It does not appear that whenever that call was made the telephone call was brought to the attention of Judge Beach. Nevertheless, as the judge carefully recites at paragraph 18 of her determination, she subsequently received a GP letter and a letter from the Appellant which the Appellant said on 2 March 2015 he was unable to attend the hearing due to his medical conditions. "The medical certificate is enclosed I would be grateful if you could put this medical certificate before the Immigration Judge". I note in passing that the medical certificate does not appear to be a standard medical certificate but rather what appears to be a copy letter from a Dr P Sahadevan dated 5 March 2015. That letter, written on a To Whom It May Concern basis, says this after introduction

"... [HN] is one of our registered patients and I have seen him on 27/2/15 with difficulty in walking due to severe pain on the right foot due to gout and depression. He has been prescribed allopurinol and mitrazepine for the above mentioned conditions. Yours sincerely"

and then a signature which purports to be from Dr Sahadevan. Unless there is another document, which I do not think there is, which is called a medical certificate, that is the medical evidence that was provided to the judge who noted its contents and took the view in brief that the documentation was insufficient to show that the Appellant was not able to attend the hearing of his appeal on the grounds of ill health. As Miss Rutherford submits with reference to a recent Upper Tribunal case of Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) the issue is

whether or not there had been unfairness in the judge's decision to refuse to adjourn the matter or, in this sense given there was no-one present at the hearing, to further consider whether or not the matter should be relisted for further hearing before any decision was made in respect of the appeal.

3. The case file shows that as long ago as in October 2014 the Appellant's then representatives S Satha & Co Solicitors wrote seeking an adjournment of the hearing then and made passing reference to possible ill health which might require a report from a consultant psychiatrist to confirm fitness to instruct and whether or not he was fit to give evidence and be cross-examined. It appears that nothing was actually done about that and no issue was raised between October and 2015 concerning the Appellant's mental health, be it by reference to depression or any other considerations was such as to prevent him giving evidence.
4. In a letter dated 16 February 2015 the case file shows that another request was made for an adjournment of 27 February 2015 but that was not done by reference to either any ill health issues or by reference to mental health problems, nor was the issue raised as to any inability of the Appellant to give instructions or to give evidence at a hearing. It was perhaps fortunate that after the notice of hearing had been given to the Appellant and S Satha & Co they found themselves without instructions and did not notify the Tribunal that they were no longer representing the Appellant.
5. In those circumstances the question is having regard to the principal issue of fairness is whether or not the Appellant had been or fallen to be dealt with unfairly by the judge who for the reasons she gave, refused to consider any further hearing of the matter or any further hearing of the appeal by another judge. Having carefully considered the judge's reasoning as set out in paragraph 18 of her decision, it seemed to me the judge was entitled in exercising the discretion that she had to consider the

nature of the material that had been brought forward and whether or not the absence of the Appellant ultimately made any difference to the determination of the grounds of appeal. The judge went on to consider both the adjournment issue and the merits overall of the appeal itself. The grounds of appeal perhaps for reasons that do not need to be stated only make reference to the adjournment issue and not to any attack on the judge's decision in relation to the merits of the decision as a whole in terms of risk on return Articles 2 and 3 of the ECHR. I am satisfied that the judge properly considered this matter on the evidence that was before the judge and in the circumstances was entitled to and did fairly consider the issue of the Appellant's absence and the subsequent explanation being given. It does not seem to me in the light of the evidence as a whole that the fact that there was a telephone call from the Appellant at some stage on 27 February 2015 makes any material difference to the fact that for whatever may have been the real reasons he did not intend to attend the hearing on that date. I also note that when the Appellant subsequently acquired representation from the Devon and Cornwall Refugee Support Organisation that the issue was not raised as to the Appellant's mental health or lack of fitness to provide instructions or to attend a hearing and give evidence. In those circumstances therefore the appeal is dismissed. The original Tribunal's decision stands.

ANONYMITY ORDER

6. An anonymity order was made by First-tier Tribunal Judge Beach on 27 February 2015 and that anonymity order should continue.

Signed

Date: 29.03.2016

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date: 29.03.2016

Deputy Upper Tribunal Judge Davey