Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/08473/2015**

THE IMMIGRATION ACTS

Heard at Field House
On 28 January 2016

Decision & Reasons Promulgated
On 11 February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

B K
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms U Dirie (counsel) instructed by Middlesex Law Chambers
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant. I do so on the basis of the minority of the appellant's children and to preserve the anonymity direction made in the First-tier.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Farmer dated on 13 November 2015, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 7 September 1979 and is a national of India. On 22 May 2015 the Secretary of State refused the Appellant's application for asylum.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Farmer ("the Judge") dismissed the appeal against the Respondent's decision.

5. Grounds of appeal were lodged and on 9 December 2015 Judge Andrew gave permission to appeal stating *inter alia*

> "In view of the guidance in *Nwaigwe (adjournment: fairness) [2014] UKUT 418 (IAC)* I am satisfied that there is an arguable error of law in this decision in that the appeal could not be properly determined without the social services file and the police reports. In view of the existing country information in relation to India I do not consider it to be an arguable error of law that the matter was not adjourned in order to obtain a country experts report. Further, it is an arguable error of law that the Judge failed to take into account the evidence produced by the respondent's representative on the day of the hearing. Indeed this is not referred to in the documents taken into account by the Judge at paragraph 9 of the decision. Further, it is arguable that the Judge failed to give adequate reasons for finding that the appellant was not credible when she had successfully obtained a non-molestation order and prohibited steps order against her husband."

The Hearing

6. (a) Ms Direi, counsel for the appellant moved the grounds of appeal. The first ground of appeal relates to an adjournment request and relies on the case of Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC). At [5] of the decision, the Judge records an adjournment request and gives her reasons for refusing the request. Ms Dirie told me that the Judge's refusal of the adjournment request deprived the appellant of a fair hearing. Ms Dirie focused on a social services report which, it was hoped, would be available at the end of November 2015 (the case was heard on 12 November 2015). She told me that the social services report would have addressed a number of the Judge's (adverse) credibility findings, and could have confirmed that the appellant is a victim of domestic violence who has pursued an extramarital affair. Ms Dirie told me that the social services report would disclose that there are concerns about the welfare of the appellant's two children, and that the production of that evidence is likely to result in a different outcome to the appeal. She told me that the refusal of the request to adjourn prevented complete evidence about the core aspects of this case from being placed before the Judge.

(b) At [30] the Judge rejected the appellant's account of pursuit of an adulterous relationship. Ms Dirie argued that the Judge's conclusions amounted to a material error of law because of a failure to take account of evidence which was placed before the Judge (the second ground of appeal). Ms Dirie produced an "immigration case history" which the respondent lodged (and relied on) at the hearing. The second page of the "immigration case history" indicates that the appellant was living with Rajinder Singh in September 2013 when an immigration raid was carried out at his house, and that she was found to be pregnant when encountered there by immigration officers. At [9] of the decision the Judge lists the documents before her. She does not mention the "immigration case history" document at all. The conclusions at [22] and [32] take no account of what was disclosed in the documentary evidence of immigration history.

(c) The third ground of appeal argues that there has been a failure to give adequate reasons at [20] and [31] for finding that the appellant is not a victim of domestic abuse, & for finding that the appellant has not pursued an extramarital affair. She argued that at [31] the Judge does not give reasons for finding that orders from the family court were not evidence of the appellant husband's violence towards the appellant and his desire to abduct one of their children.

(d) Ms Dirie urged me to allow the appeal, to set the decision aside, and to remit the case of the First-tier Tribunal – arguing that the appellant has not yet had a fair hearing.

7. For the respondent, Mr Avery told me that the decision does not contain errors of law, material or otherwise. He reminded me that the adjournment request made at the start of the hearing of this case was the third adjournment request made – each one on the same basis. He told me that, from [22] onwards, the Judge finds that the appellant is neither a credible nor a reliable witness, and told me that the Judge sets out clear reasons for finding that there are inconsistencies in the appellant's evidence. He told me that the anti-molestation orders and protection orders from the family courts could only be taken at face value, and that the Judge was correct not to make findings of fact about the reasons that the orders were granted. He reminded me that the social services report has not been submitted and it is not clear where it is today, and told me that the Judge made clear findings of fact based on the evidence before her. Those findings of fact lead the Judge to an unassailable conclusion. He asked me to dismiss the appeal and allow the decision to stand.

Analysis

8. Rule 4(3)(h) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 empowers the Tribunal to adjourn a hearing. Rule 2 sets out the overriding objectives under the Rules which the Tribunal "*must seek to give effect to*" when exercising any power under the Rules. The overriding objective is to deal with cases fairly and justly. This is defined as including "(a*) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and*

the resources of the parties and of the Tribunal; (b) avoiding unnecessary formality and seeking flexibility in the proceedings; (c) ensuring, so far as is practicable, that the parties are able to participate fully in the proceedings; (d) using any special expertise of the Tribunal effectively; (e) avoiding delay so far as compatible with proper consideration of the issues".

9. When considering whether or not to adjourn, the issue comes down to fairness. In Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) it was held that if a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds the question for the Upper Tribunal is not whether the First-Tier acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing?

10. The appellant claims that she has a well-founded fear of persecution because she is a member of a particular social group, as a single mother in India. The appellant has two children (one born in 2002, the second born in 2011) both of whom are dependent upon her asylum claim

11. The application to adjourn was made on four grounds, each of which is recorded by the Judge at [5] of the decision. The second ground of the application is recorded as *"... There is no evidence from social services and they have child protection concerns including concerns that the second appellant might be forced into an arranged marriage by her father*." ("*The second appellant*" is this appellant's child born in 2002).

12. At [5] the Judge deals with the reasons for refusing the application to adjourn. She sets out clear reasons for refusing the first, third & fourth leg of the application to adjourn, but glosses over the second ground of the application stating simply "*the first appellant could give oral evidence about the assault and the consequences of it and any social services involvement."*

13. The Judge's findings and conclusions are set out between [15] and [36]. Between [15] and [30] there is no suggestion of any evidence heard by the Judge about, or any enquiry made by the Judge into, social services involvement. At [30] and [31] the Judge refers to family court proceedings, and appears to accept that the family court has made a prohibited steps order against the appellant's husband, who has not resisted that litigation.

14. Even though the Judge did not find the appellant to be either a credible or a reliable witness, the Judge's findings indicate that one of the appellant's children has made, and then withdrawn, allegations of domestic abuse, and that the difficulties the appellant has encountered caused her to seek recourse to the family courts. In the last sentence of [32] the Judge summarises her rejection of the appellant's claim.

15. Even though the Judge writes a careful and detailed decision, it is clear from the detail given by the Judge that the evidence she heard about the circumstances of the appellant and her two children was incomplete. At [5] the Judge records the need to secure some evidence of social services involvement. The Judge's findings and conclusions between [15] and [36] say nothing of social services involvement with this family.

16. Counsel for the appellant sought an adjournment (at first instance) because of child protection concerns and because it is alleged that the appellant's husband wants to force her daughter into an arranged marriage. There is no suggestion that the appellant is simply manipulating counsel. Counsel would not make statements in support of an application to adjourn unless there were grounds to make those statements. I take guidance from the case of Nwaigwe. Although I do not have sight of the social services report, it is realistically possible that the evidence contained in that report could result in a different outcome to this appeal.

17. I must therefore come to the conclusion that the refusal of the application to adjourn on the basis that they would be independent documentary evidence from the social services department about child protection concerns has prevented relevant matters, which go to the core of the appellant's claim, from being aired in court. The appellant has therefore been deprived of a fair hearing and it is likely that Judge was not able to consider all of the material evidence available.

18. It is common ground that documentary evidence was produced by the respondent's representative on the morning of the appeal in this case. That documentary evidence was the "immigration case history" handed to me. It is evidence which quite clearly links the appellant to a man who is not her husband. The Judge makes no reference at all to that evidence and, when [9] is read alongside the Judge's findings and conclusions, it appears that the Judge has failed to take account of material evidence.

19. I therefore find that the decision is tainted by material errors of law. The Judge's determination cannot stand and must be set aside in its entirety. All matters must be determined of new.

REMITTAL TO FT

20. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

> (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
>
> (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

21. I find that this case should be remitted because the Appellant did not have a fair hearing and was deprived of the opportunity to lead relevant evidence which may go to the core of her claim. In this case none of the findings of fact are to stand.

22. I remit the matter back to the First-tier Tribunal sitting at Hatton Cross, before any First-tier Immigration Judge other than Judge Farmer.

CONCLUSION

Decision

23. The decision of the First-tier tribunal is tainted by material errors of law.

24. I set aside the decision. The appeal is remitted to the First Tier Tribunal to be determined of new.

Signed Date 5 February 2016

Deputy Upper Tribunal Judge Doyle