



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

Appeal Number: IA/44531/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision &  
Promulgated**

**Reasons**

**On 20 July 2016**

**On 21 July 2016**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**MOHAMMAD IDRIS HOSSAIN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr B. Danial, Counsel instructed by SEB Solicitors

For the Respondent: Mr N. Bramble, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appealed against the respondent's decision dated 17 October 2014 to refuse leave to remain as a Tier 4 (General) Student Migrant on the ground that a bank statement submitted in support of the application had "been confirmed as false by the issuing authority".
2. The appeal was listed for hearing on 2 July 2015. The appellant attended the hearing but it was adjourned because no respondent's bundle had

been served in accordance with directions. The Tribunal made a further direction that the respondent serve the bundle within seven days of the hearing. However, the bundle was not served until the morning of the relisted hearing on 1 December 2015. This was the first time that the respondent disclosed the evidence relied upon to support the reasons for refusal.

3. The appellant instructed a legal representative to assist him at the hearing on 1 December 2015 but he says that he was unable to attend the hearing because he was too unwell to do so. A brief letter dated 30 November 2015 from Dr Mustafa at the IPSA Medical Clinic was produced to support an adjournment request. The letter stated that the appellant had been seen as an acute emergency for severe back pain on that date. Dr Mustafa stated that he advised that the appellant was not medically fit to attend court due to severe pain. Although the letter was brief it contains the full contact details of the clinic as well as a summary of Dr Mustafa's qualifications and his GMC number.
4. First-tier Tribunal Judge Devittie ("the judge") gave the following reasons for refusing to adjourn the appeal:
  - "9. I declined the application for an adjournment because I was satisfied that the appellant's claim that he was unable to attend the hearing due to ill health was false.
    - (i) The letter from his doctor is remarkable for its brevity. It does not state the cause of his condition; it does not give the prognosis; it does not provide any medical history to do with appellant's condition; it does not state whether there have been previous consultations for the same condition - nor, does it say when the appellant's condition is likely to improve such that he will be able to attend the hearing.
    - (ii) The onus rests on an appellant to present evidence in support of an application for an adjournment, to show that he is medically unfit to attend the hearing. The evidence presented in this case is entirely unsatisfactory, such that I do not attach weight to it.
    - (iii) The appellant has failed, almost a year after the initial letter of refusal, to present any evidence to controvert the clear and cogent evidence presented by the respondent to support the allegation that the bank statement is forged. This tends to reinforce my belief that the appellant seeks an adjournment merely as a means of delaying a decision on the substantive merits of his appeal."
5. The judge went on to dismiss the appeal on the ground that the Document Verification Report supported the respondent's claim that the bank statement was forged. He noted that the appellant had ample opportunity to approach the bank for evidence to rebut the allegation.
6. The appellant applied for permission to appeal on grounds of fairness. The appellant's representatives attached a further letter from Dr Mustafa dated 28 December 2015, which expanded on the advice he gave in his earlier letter. He confirmed that he saw the appellant on 30 November 2015 when he came in as an acute emergency for severe back pain. He started him on a strong analgesia as well as anti-relaxant medication

which he said often has side effects of drowsiness and nausea. He advised him not to travel and to rest. Dr Mustafa confirmed he had seen the appellant for a follow-up appointment that day and had been told that there were issues with the previous note. He stated that if any further clarification was required the clinic could be contacted on the number given.

### **Decision and reasons**

7. After having considered the grounds of appeal and oral arguments I satisfied that the First-tier Tribunal decision involved the making of an error on a point of law.
8. The judge was entitled to assess what weight could be given to the initial letter written by Dr Mustafa on 30 November 2015 but the detail he appeared to require seems to be excessive given that there was no evidence to suggest that the appellant did not wish to pursue his appeal or was simply seeking to delay matters. The appellant attended the hearing on 2 July 2015. He instructed a legal representative to represent him at the resumed hearing on 1 December 2015. It is the case that the appellant had the barebones of the allegation put to him in the original reasons for refusal letter and could have done more to seek to authenticate the bank statement while waiting for the appeal. However, it seems that the judge failed to take into account the fact that the Document Verification Report used to support the allegation was deemed sufficiently important to adjourn the previous hearing. The respondent failed to comply with the further direction to serve the bundle within seven days of the hearing on 2 July 2015, and instead only served the bundle on the morning of the resumed hearing. Even if the judge had concerns about the reliability of the medical evidence produced in support of the adjournment request, in the absence of any evidence to suggest that he did not seek to pursue the appeal, the combined effect of the appellant's absence and the late submission of evidence that he should have been given fair opportunity to respond to renders the decision unfair and therefore amounts to an error of law: see *Nwaigwe (adjournment: fairness)* [2014] UKUT 00418
9. The appellant has now produced a further letter from the bank, which the respondent has not yet had an opportunity to consider. While I am conscious of the delays that have already occurred in this case the consequence of my finding is that the appeal has to be remitted to the First-tier Tribunal for a fresh hearing. In the interim the respondent will be able to make further enquiries.

### **DECISION**

The First-tier Tribunal decision involved the making of an error on a point of law

I set aside the decision and remit the appeal to the First-tier Tribunal

Signed  Date 20 July 2016  
Upper Tribunal Judge Canavan