



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

Appeal Number: IA/43760/2014

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 19 May 2017**

**Decision & Reasons Promulgated
On 31 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

**YASIR YASIR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Brown counsel instructed by Arshad & Co Solicitors

For the Respondent: Mr A Mc Vitie Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Appellant was born on 23 June 1984 and is a national of Pakistan.

3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge O Williams promulgated on 26 May 2016 which dismissed the Appellant's appeal against the decision of the Respondent dated 17 October 2014 to refuse the Appellants application for leave to remain on human rights grounds.
5. The refusal letter gave a number of reasons:

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Williams ("the Judge") dismissed the appeal against the Respondent's decision.
7. Grounds of appeal were lodged arguing that there had been procedural unfairness in refusing the application for an adjournment in order to obtain supporting evidence of the ongoing discussions in respect of a reconciliation between the Appellant and his estranged wife from those family members who were involved in the discussions and possibly a statement from his estranged wife. Reliance was placed on the case of Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) to argue that the Appellant had been deprived of a fair hearing.
8. On 29 September 2016 Judge Page gave permission to appeal.
9. At the hearing I heard submissions from Mr Brown on behalf of the Appellant that he relied on the grounds of appeal.
10. On behalf of the Respondent Mr Mc Vitie submitted that :
 - (a) The Judge identified the issue was one of fairness.
 - (b) He had to consider the arguments advanced on the day to support the application and he concluded that it was vague.
11. In reply Mr Brown on behalf of the Appellant submitted that evidence of reconciliation would be relevant to Article 8. It was unfair to suggest that such evidence could be obtained by the afternoon which was what the Judge offered.

The Law

12. The 2014 Procedure Rules Rule 4(3)(h) 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. It follows that they are the issues to be considered on an adjournment application as well. The overriding objective is 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".
13. 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, it is important to recognise that the question for the Upper Tribunal is not whether the FtT 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?

Finding on Material Error

14. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
15. This was an appeal against the refusal of an application made on 22 August 2014 for leave to remain in the UK based on the Appellants private life. Although not mentioned in his application the factual matrix of the case was that on 11 October 2012 the Appellant applied for leave to remain as a spouse and that was granted until 8 November 2015. However, the marriage appears to have broken down and his leave was curtailed to expire on 25 August 2013.

16. The Judge dealt with the application for an adjournment at paragraphs 6-8 of his decision. He noted that although the Appellant and his wife were separated the respective families had been seeking a permanent reconciliation. An adjournment was sought by the Appellants counsel to obtain confirmation of ongoing discussions between the families.

17. I am satisfied that the Judge considered the application by reference to the Procedure Rules as he set them out at paragraph 7. He identified that the issue was one of fairness. He also noted that the Appellant had had sufficient time to call evidence regarding the supposed talks and indeed offered to put the matter back until the afternoon to allow time for evidence to be called.

18. I am satisfied that the Judge then gave cogent and detailed reasons why he refused the adjournment at paragraph 8 : the adjournment would be for an unknown period of time; the evidence of the discussions was very vague and no direct evidence that such discussions were taking place although he had offered an opportunity for such evidence to be called; the reconciliation may or may not be successful and the Appellant was able to give evidence of the nature of the discussions himself.

19. I am satisfied that given the Judge's detailed examination of all the relevant factors that he was entitled to conclude that adjourning the matter would not be fair and just. I am satisfied that the Judge took into account all of the relevant factors and that the Appellant was not deprived of a fair hearing and the decision made was reasonable in the circumstances.

CONCLUSION

20. I therefore found that no errors of law have been established and that the Judge's determination should stand.

DECISION

21. The appeal is dismissed.

Signed

Date 29.5.2017

Deputy Upper Tribunal Judge Birrell