



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/50315/2014

THE IMMIGRATION ACTS

Heard at FIELD HOUSE
On 26th September 2017

Decision and Reasons Promulgated
On 02nd October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE
Ms G A BLACK

Between

[S S]
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharma (Counsel)

For the Respondent: Ms J Isherwood (Home Office Presenting Officer)

DECISION AND REASONS

1. I shall refer to the parties as “the appellant” and “the Respondent”. This is an error of law hearing to consider whether or not there was a material error of law in the decision of the First-tier Tribunal (Judge Chana) (“FTT”) promulgated on 19th December 2016 in which she dismissed the appellant’s appeal against an application for leave to remain under Tier 4, having refused an application for an adjournment

on medical grounds. The hearing took place on 17th August 2016 and the FTT determined the appeal on the papers.

Background

2. The appellant is a citizen of Pakistan and his date of birth is [] 1987. He entered the UK as a student and studied in accountancy from 2009. He was then granted leave with a post study visa between 2012 – 2014. He applied for further leave to study on a course in health care management. The respondent refused the application on 28.11.2014 on the grounds that the appellant was not a genuine student and could not support himself without working in breach of his visa conditions with reference to paragraph 245ZX(o) Immigration Rules.

FTT decision

3. The appeal came before the FTT for hearing. Counsel made an application for an adjournment on the grounds that the appellant was ill suffering from mental health difficulties. The application was refused by the FTT and Counsel withdrew as he had instructions only to make the application [14-17]. The FTT proceeded to determine the appeal [18-25] on the papers which included an interview record with the appellant, the appellant's witness statement and some financial evidence. The FTT found the appellant's claim to be a genuine student to be lacking in credibility in the light of his decision to change his career path from accountancy to healthcare. The appellant's claim that he studied healthcare in 2001 was not found credible given that he would have been aged 14 years at that time [20]. The FTT found the documentary evidence to be unreliable and did not accept that the appellant lived on £47.00 pw [24]. Article 8 was not engaged as the FTT found that the appellant must have been aware that his stay in the UK was temporary [26-27]

Application for permission to appeal

4. In unnecessarily long grounds it was contended that the FTT erred procedurally by unfairly refusing to grant an adjournment which had resulted in the appellant being deprived of the opportunity to attend for the hearing and to give oral evidence. The history of previous adjournments was not relevant. The appellant had produced medical evidence in support of his mental ill health. The FTT failed to give adequate consideration to the evidence and failed to give adequate reasons for refusing the adjournment. It was further contended that the FTT failed to consider all of the evidence as to the substantive issues.

Permission grant

5. Permission was granted by UTJ Grubb on 7th August 2017 who found that there were arguable grounds in the light of the medical evidence that the FTT erred by refusing to grant the adjournment.

Rule 24 Response

6. The respondent opposed the application arguing that the appeal was outstanding since 29.6.2015 when first listed for hearing. There was no evidence to show when the appellant would be well to attend. The FTT was entitled to proceed given that two years had elapsed and the appeal remained unresolved. The decision was reasoned and was fair given the length of delay.

Submissions

7. At the outset the representatives indicated that they had been unable to agree the background chronology in particular with regard to the medical evidence that had been before the FTT.
8. I proposed the following chronology with documentary references to Appellant's bundle;
- hearing listed for 29.6.2015 adjourned on basis of written request
 - relisted for hearing 7.3.2016. Written request (J3) for adjournment refused on 3.3.2016 (J2) as sick certificate (back pain) (J4) was inadequate evidence. Application renewed at the hearing and granted.
 - relisted for hearing on 15.7.2016. Written request for adjournment dated 8.7.16 refused (I1). Renewed oral application granted on basis of letter from GP dated 4.7.2016 (I2) and from social worker dated 14.7.2016 (H4).
 - hearing relisted for 17.8.2016. Written request for adjournment made by solicitors referring to H4 dated 14.7.2016 was refused on 9.8.2016 as no medical evidence provided and no date for recovery given. Letter dated 15.8.2016 from GP (H1) stating that the appellant remains ill and suggests further 6 months before new hearing date. Renewed at hearing and refused.
9. The chronology was agreed and I queried whether or not the GP letter H1 was before the FTT.
10. Mr Sharma submitted that the letter dated 15.8.2016 (H1) was before the FTT and that the FTT failed to place sufficient weight on the same and placed too much weight on the history of previous adjournments. The decision and reasons was unclear as to what medical evidence was before the FTT at the hearing [14]. The FTT misquoted a letter as being from a GP when in fact it was from a social worker, and there was a 6 month delay by the FTT before the decision was promulgated. The content of the letter 15.8.2016 (H1) was referred to in the decision. The FTT erred in stating that there was no medical evidence and no indication given as to when the appellant would be able to attend [16]. The appellant had mental health difficulties and this had impacted on his ability to give instructions. The FTT could have taken alternative steps such as listing a CMR. Mr Sharma confirmed that the appellant had now seen his solicitors and given instructions and was ready to proceed.

11. Ms Isherwood submitted that the real issue was when the matter was to be determined finally. The FTT was correct in taking the decision to refuse the adjournment. It was unclear as to the nature and extent of the appellant's illness and there must be concerns as to his intentions as found by the FTT [22]. The application was refused in 2014 and it must be accepted that the appellant was in a position to prepare his case.

Discussion and conclusion

12. Having considered all of the evidence and in the light of the lack of precision in the decision and reasons as to the dates on the documentary evidence [14] I am prepared to accept that the letter (H1) was before the FTT on 17th August 2016. That letter (H1) clearly stated that the appellant suffered from mental health difficulties (psychosis with depression and possible schizophrenia) and that he was mentally unstable and reclusive in his home. There was additional evidence from the appellant's social worker and his solicitors produced in respect of previous applications. There were no concerns raised or investigation as to the authenticity of the medical evidence. Somewhat oddly the solicitor's letter H3 requesting the adjournment for the hearing of 17th August 2016 is dated 5.8.2015, but this is likely to be a typo. In the circumstances I am satisfied that the FTT erred by way of procedural unfairness in refusing the adjournment and thus depriving the appellant of the opportunity to attend for the hearing when there was medical evidence that he suffered from mental illness and was a recluse. I accept that there was a very lengthy and open ended delay, but there were alternative steps that could have been taken by the FTT, and which now perhaps should be taken. The FTT could have listed the matter for a CMR hearing and made a direction for expert medical evidence to be produced. In the circumstances I find that there has been unfairness to the appellant. There is no alternative but to relist the matter for an expedited hearing *de novo* at Hatton Cross (excluding Judge Chana). Ground one only is made out. The remaining grounds were not pursued and in any event permission was not granted in respect of the same. The appellant has provided a witness statement dated 22.9.2017 and no reference is made to any current health difficulties that would prevent him from attending for the hearing.

Decision

There is a material error of law in the decision which shall be set aside.

Expedited Hearing *de novo* at Hatton Cross (excluding Judge Chana).

Signed

Date 29.9.2017

GA Black
Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER

NO FEE AWARD

Signed

Date 29.9.2017

GA Black

Deputy Judge of the Upper Tribunal