Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/01665/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 June 2017	**On 15 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR AKHTAR SULTAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance or representation
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Pakistan born on 5 November 1984. He arrived in the United Kingdom and claimed asylum on 27 August 2015. The basis of his claim as set out in the screening interview and substantive interview is that he had problems from 2009 because he is a Sunni Muslim and his girlfriend was a Shia Muslim. He wished to marry his girlfriend but her family were very opposed to that proposal and threats were made to the Appellant on the telephone between June and October 2009 following which towards the end of the year he was physically attacked in the street

by his girlfriend's brother and some of his friends which required stitches. The Appellant continued to receive telephone threats despite changing his phone number and his father arranged for him to leave the country. It would not have been possible for him to relocate internally because his girlfriend's family were influential and had contacts with Shia organisations.

2. The Appellant in fact came to the United Kingdom as a student arriving in March 2010 and he applied for further leave as a student and only made his asylum application when those applications were unsuccessful. The Respondent refused his claim for asylum in a decision dated 5 January 2016 and the Appellant appealed against this decision. His appeal came before First-tier Tribunal Judge Talbot for hearing on 23 December 2016. At the hearing there was no appearance either by the Appellant or a representative on his behalf. The judge's clerk telephoned the Appellant's solicitors and was informed that the Appellant was not well and a letter would be faxed to the Tribunal. A letter was duly faxed on 23 December 2016 which states:

> "*Please note we have been informed that our client has been admitted to the hospital due to panic attack, anxiety and severe stress. We have been provided with hospital medical documents whereby he is referred by a doctor to the rapid access chest pain clinic. We have been instructed that our client will be unable to attend the hearing today on 23 December 2016. Please also note we have no instructions to attend the hearing. We therefore have been instructed to request to adjourn the hearing listed for 23 December 2016 as our client still wishes to give oral evidence*."

3. Attached to the covering letter was a discharge summary from Northwick Park Hospital dated 22 December 2016 which records that the Appellant had arrived or presented at the hospital at 15:26 on 22 December and had been discharged at 18:07 on the same day. The basis for his presentation was that he had left-sided chest pain in his left arm, however his ECG showed no dynamic changes or acute ischemia and it was considered it was caused by stress and panic attacks.

4. First-tier Tribunal Judge Talbot considered the request for an adjournment at [3] and [4] of his decision and noted in fact that there had been a previous adjournment on 1 September 2016 essentially on the same basis that the Appellant had attended A & E on 30 August 2016 with the presentation of chest pain and had been discharged. The judge held at [4]:

> "*After careful consideration and taking into account the interests of justice and the provisions of the Tribunal Procedure Rules, I refused the adjournment request for the following reasons. There is no evidence of any chronic medical condition. It appears that the chest pain occurs shortly before a court hearing. If the hearing was adjourned again, there is nothing to reassure me that it would not happen again. I also note that the previous episode had in fact*

occurred not on the hearing day but two days previously and had settled spontaneously after 20 minutes so it does not adequately explain the Appellant's failure to attend that previous hearing. On this occasion, the Appellant had been discharged at 6pm on the day preceding the hearing. Again there was no indication that he was unfit to attend on 23.1216. I can see no justification for adjourning the matter again and have no confidence that he would attend on any future date."

5. The judge then proceeded to consider the asylum appeal and to dismiss it on the basis, inter alia, that at [16] the Appellant's account lacked detail and there was in inherent implausibility in his story. At [17] he provided no corroboration for his claim and at [18] "*I conclude that the Appellant's claim is wholly unreliable. I do not accept the core of his account. I do not accept that he received any threats or that he was physically attacked and I do not accept that he genuinely fears return*."

6. An application for permission to appeal to the Upper Tribunal was made in time. The grounds in support of the application stated that the judge failed to apply the relevant Rule governing adjournment applications and wrongly refused the adjournment application. Reference was made to the decision of the Upper Tribunal in Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC):

> "*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? See SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284*."

7. Permission to appeal to the Upper Tribunal was granted by Judge of the First-tier Tribunal Page on 28 April 2017 on the basis that the argument that the judge unfairly refused the application for an adjournment merited full argument.

Hearing

8. At the hearing before me there was no appearance by or on behalf of the Appellant. I requested my clerk to telephone the Appellant's representatives, Pride Solicitors, to whom the hearing notice had been sent and they produced a fax dated 6 June 2017 which provides as follows:

> "*We are writing regarding the above-mentioned appeal hearing listed for hearing. Permission was granted to our client. We have instructions by our client to request the respected Immigration Tribunal to proceed to determine the matter on the available bundle and the grounds submitted for permission to appeal. We contacted our client on 5 May 2017 but unfortunately we did not get response by him. We received another court direction notice on 22 May 2017. We updated our client but we did not get further instructions. We do not have instructions to attend the hearing. We are submitting a copy of the grounds of appeal and a bundle for the court records*."

9. Mr Tufan appeared on behalf of the Secretary of State. He sought to rely on the Rule 24 response dated 11 May 2017 which provides that the judge used his discretion to refuse the Appellant an adjournment. The judge had taken into consideration what had happened in respect of the previous hearing and had come to the conclusion that that was not coincidental, which was a finding open to him and that the judge had acted fairly.

10. Mr Tufan submitted with regard to Nwaigwe (op cit) that fairness did not require an adjournment to be given in this case in light of the multiple failures by the Appellant to appear. He also sought to rely on Practice Direction 9.4 of the Practice Directions for the Immigration and Asylum Chambers of the First-tier and Upper Tribunals dated 13 November 2014. At [9] of the Practice Direction, which is concerned with adjournments, provides that any application which is not made at least one clear working day before the hearing requires the attendance of the party or a representative seeking the adjournment. He submitted that in light of the failure by the Appellant or a representative to appear and in light of the history of this case that the appeal should be dismissed.

Findings and Reasons

11. The Appellant's solicitors did not request that the hearing before the Upper Tribunal be adjourned but rather that it be determined on the basis of the papers. There is an unfortunate history of non-appearance by both the Appellant and his representatives in the pursuance of his asylum appeal and I do take that into account when considering whether First-tier Tribunal Judge Talbot materially erred in law in failing to adjourn the appeal that came before him on 23 December 2016. I have concluded that there is no material error of law in his decision. The judge took full account of the history and the fact that there had been a previous application for an adjournment which was successful on 1 September 2016 based on the Appellant's attendance at A and E on 30 August 2016 with the presentation of chest pain. The judge took into account the medical evidence submitted to him in the form of a discharge summary from Northwick Park Hospital of 22 December 2016 and was entitled to find that whilst that provided an explanation for the fact that the Appellant had been suffering from panic attacks, anxiety and stress it did not explain why he did not attend the hearing the following day. I further find that the judge was entitled to find that, in light of the particular history, there was no justification for adjourning again and that he could have no confidence

that the Appellant would attend on any future date. That unfortunately remains the position at the hearing before the Upper Tribunal. For whatever reason the Appellant appears unwilling to attend the Tribunal in order to pursue his appeal. In these circumstances, taking full account of the decision in Nwaigwe (op cit) I do not find that fairness demanded on the particular facts of this case that it was necessary to adjourn the appeal for the Appellant to give oral evidence.

12. Whilst the grounds of appeal seeking permission to appeal to the Upper Tribunal did seek to challenge the substantive findings by the First-tier Tribunal permission to appeal was expressly not granted on that basis and therefore the findings of First-tier Tribunal Judge Talbot stand. I find no error of law in his decision and consequently the appeal is dismissed.

Notice of Decision

The appeal is dismissed on asylum grounds.

No anonymity direction is made.

Signed Rebecca Chapman Date 14 June 2017

Deputy Upper Tribunal Judge Chapman