



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

Appeal Number: PA/02791/2017

THE IMMIGRATION ACTS

Heard at Liverpool

On 4 December 2017

**Decision and Reasons
Promulgated**

On 11 December 2017

Before

Deputy Upper Tribunal Judge Pickup

Between

**Muhammad Nazim Uddin
[No anonymity direction made]**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mrs L Barton, instructed by Hamlet Solicitors LLP

For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Knowles promulgated 12.5.17, dismissing his appeal against the decision of the Secretary of State, dated 3.3.17, to refuse his protection application.
2. The Judge heard the appeal on 19.4.17 at Manchester.
3. First-tier Tribunal Judge Adio granted permission to appeal on 13.9.17.

4. Thus the matter came before me on 4.12.17 as an appeal in the Upper Tribunal.

Error of Law

5. The appellant was not present at the appeal hearing. I was given no explanation for his absence.
6. For the reasons summarised below, I found no material error of law in the making of the decision of the First-tier Tribunal such as to require the decision to be set aside.
7. The primary ground of appeal, and that on which Mrs Barton based her submission, is that the refusal of the adjournment application and proceeding with the appeal in the appellant's absence was procedurally unfair and not in the interests of justice, pursuant to Rule 28, and did not meet the overriding objectives of fairness and justice.
8. Prior to the case review, the appellant's representatives sought an adjournment to obtain documents from Bangladesh and because his partner has a severe disability and it was not known if wheelchair access was available at the court. The application was refused by the Designated Judge conducting the case review hearing. A confirmation of the hearing date of 19.4.17 was sent to the appellant's representatives, warning that if he or his representatives did not attend without satisfactory explanation, the Tribunal may determine the appeal in their absence.
9. Prior to the appeal hearing on 19.4.17, there was a further written application for an adjournment, made by letter dated 13.4.17, send by fax the same day. It was asserted that the appellant's partner was unable to attend the hearing, due to her medical condition. An adjournment from 19.4.17 to a date from July 2017 was sought. The application was supported by a short medical note stating merely that she was suffering from "urological syptoms (& investigations)" and considered unfit to attend court until the end of June 2017. No further explanation was offered and in the circumstances a judge of the First-tier Tribunal considered the application on the same date, 13.4.17, and determined that the information was entirely inadequate to justify the requested adjournment, noting that the medical note did not explain why she was not able to attend court.
10. A notice was sent out to the parties confirming that the adjournment application was refused, for the reasons summarised above, and that the hearing would proceed on 19.4.17. There was no further correspondence from the appellant's representatives.
11. The appellant was neither present at the appeal hearing on 19.4.17 nor represented, though he clearly still had instructed representatives, who

continue to act for him. The adjournment application was not renewed in person or in writing.

12. At [7] of the decision, the judge considered the absence of both appellant and representative and recited the history and noted that there was no explanation for their absence and no further correspondence.
13. It is also noted that at an earlier date the appellant had been directed to provide to the Tribunal no later than 5 days before the hearing, witness statements and a paginated bundle of documents to be relied on. No such documents were ever submitted. At [8] the judge noted that there was no evidence on behalf of the appellant, no witness statements and no bundle of documents. The judge determined to proceed in the appellant's absence.
14. Before me, Mrs Barton was unable to explain why there was no attendance of appellant or representative at the hearing. She accepted that at the very least his representative should have been present at the appeal hearing. There was no reason given as to why the appellant himself did not attend and why his representative did not attend, who could have renewed the adjournment application and perhaps provided better information about the claimed medical condition. I note that even now, the Tribunal has not been given any better information. It appears that even now there has been no preparation of the appellant's case for hearing. Mrs Barton was unable to point me to any witness statements or bundle of documents. As Mr McVeety submitted there remains no cogent explanation as to why refusal of the adjournment application led to "not one scrap of evidence" being submitted.
15. It would have been open to the appellant and his representative to attend and pursue or renew an application to adjourn. He could have obtained a witness statement from his partner for use in the appeal. He could have obtained further and better evidence as to why she was unable to attend. It appears that the appellant and his representative simply decided not to attend the hearing. Mrs Barton has been unable to enlighten the Tribunal as to why there was no attendance stating, "I can't say why he didn't turn up." There is no excuse for the appellant's behaviour. I am surprised that Mrs Barton did not obtain better instructions on the matter before attending to pursue an appeal to the Upper Tribunal.
16. Mrs Barton's second line of appeal was to suggest that the article 8 assessment at [27] of the decision was inadequate. However, in the absence of the appellant, any witness, or any documents, it is difficult to see how the judge could have made any more favourable finding.
17. 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 First-tier Tribunal 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?

18. In all the circumstances, I find that whilst there was no specific discussion within the decision of the fairness, or of the Tribunal Rules, or any case law, the decision to continue in the absence and effective contempt of the appellant for the appeal process was entirely justified and not unfair to the appellant. It was he who chose not to attend and not to present any evidence at all in support of his appeal. The appellant was not deprived of a fair hearing just because he consciously decided not to bother attending.
19. No error of law is disclosed in any of the grounds.

Conclusion & Decision

20. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity

direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

Fee Award *Note: this is not part of the determination.*

I make no fee award.

Reasons: The appeal has been dismissed.

A handwritten signature in black ink, appearing to read 'James', is centered on the page.

Signed

Deputy Upper Tribunal Judge Pickup

Dated