



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

Appeal Number: PA/04837/2017

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 5 January 2018**

**Decision &**

**Promulgated**

**On 26 January 2018**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**[H R]**

**(~~ANONYMITY DIRECTION NOT MADE~~)**

**and**

Appellant

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

Respondent

**Representation:**

For the Appellant: Mr B Danial, Reymond Solicitors

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

**DECISION AND REASONS**

1. The Appellant is a national of Bangladesh born on [ ] 1958. He claims to have left Bangladesh on 10 January 2016 and to have arrived in the UK the following day in possession of a valid visit visa. There is an alternative start point, which is that the Appellant arrived in the UK on 11 January 2011 on a valid visit visa. In either event he claimed asylum on 3 November 2016 on the basis of a fear of persecution due to his membership of the Jamaat-e-Islami Party, as a consequence of which he stated he was at risk from the Awami League who attacked him in either 2010 or 2009 and 2010, following which he went into hiding and fled to

the UK. He claimed that in 2013 false accusations were made by the Awami League against him to the effect that he had been responsible for killing eight people. The Appellant also claimed to have an alternative name which is [MI] born on [ ] 1956.

2. His asylum application was refused on 4 May 2017 and he appealed against that decision. His appeal came before First-tier Tribunal Judge M A Khan for hearing on 19 June 2017. On that date the Appellant was not in attendance but had a legal representative, Mr Danial, requested an adjournment on the basis that the Appellant was not present, that he had been unwell and had contacted his representatives on 16 June 2017 informing them that he was unwell and that an adjournment request had been made on that date. Mr Danial further submitted that there had been insufficient time for his representatives to prepare the appeal and that his case would also benefit from an expert report. Counsel representing the Home Office opposed the adjournment request. The judge gave Mr Danial until midday to provide medical evidence that the Appellant was unwell, however at midday such evidence was not forthcoming, thus the request for an adjournment was refused and the judge decided to proceed in the absence of the Appellant pursuant to Rule 28 of the First-tier Tribunal Procedure Rules.
3. The judge heard submissions from the Respondent's representative only and then proceeded to dismiss the appeal relying on inconsistent statements made by the Appellant in his screening and asylum interviews [24] and finding that the Appellant had failed to explain inconsistencies in his evidence [31]. The judge at [33] stated "*I find on the evidence before me, on the lower standard of proof, the appellant has fabricated evidence in order to support his asylum claim based on his political opinions*" and at [35] "*I do not accept the appellant's evidence that he fears on the ground of his political involvement on his return to Bangladesh. I do not find the appellant credible or consistent with regards to his asylum claim.*" An application for this decision was promulgated on 12 July 2017.
4. An application for permission to appeal was made to the Upper Tribunal on the basis that the judge had acted unreasonably and the failure to grant an adjournment had resulted in an unfair hearing. Reference was made to a discharge summary from the Homerton Hospital which was appended to the grounds of appeal confirming that the Appellant attended the hospital on 19 June 2017 presenting with left-sided chest pain. It was submitted in the alternative, that the judge had erred in failing to consider documents and evidence due to the fact that the Appellant had been unwell and his legal representatives had been unable to prepare the evidence including expert evidence in support of his case. Reference was made to the Tribunal's decision in Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC). Thirdly, it was submitted that the conduct of the hearing was unfair in light of the fact there was no Appellant's bundle, no Home Office bundle or evidence relating to the Appellant at the hearing before the First-tier Tribunal which rendered one party i.e. the Appellant's representative unable to fully present its case. It was further asserted that the Appellant

had been deprived of a fair hearing and reliance placed on the decision in Elayi (fair hearing – appearance) [2016] UKUT 508 IAC.

5. Permission to appeal was granted on 14 November 2017 by Upper Tribunal Judge Kebede in the following terms:

*“Whilst there was justification for Judge Khan refusing the adjournment request in view of the lack of any medical evidence at the time, it is just about arguable, in the light of the hospital discharge summary now provided, that the appellant was deprived of a fair hearing of his appeal owing to his inability to attend. The lack of documentation before the judge is also related to the question of the appellant’s health and accordingly all grounds may be argued.”*

### *Hearing*

6. I heard submissions from Mr Danial on behalf of the Appellant and Mr Bramble on behalf of the Respondent. Whilst no application had been made to adduce further evidence in accordance with Rule 15(2)(a) of the Upper Tribunal Procedure Rules 2008 it appeared in fact that there were documents missing from the Upper Tribunal file which I admitted in the interests of justice. The first of those documents is a copy of the inpatient discharge summary from Homerton University Hospital. It is dated 19 June 2017. This confirms that the Appellant presented with left-sided chest pain he had an ECG, he was transferred to the Acute Care Unit for further assessment and the summary states that the patient was asking to go home before being seen by the medical doctor *“We explained to the patient we are concerned he may have had a heart attack. From his medications it seems he has risk factors for this, also had LBBB on ECG.”* The summary concluded that the patient had discharged himself with no medication. There is no time recorded on the discharge summary as to when exactly on 19 June 2017 the Appellant was discharged.
7. The other material document was the request for an adjournment, which was sent to the First-tier Tribunal on 16 June 2017. There is a fax header which confirms that the document went through, however it does not appear on the Tribunal’s file so either it was not received or was not placed on the Appellant’s file in this matter. This letter states that:

*“It has now come to our attention that our client has a hearing on 19 June 2017 after we were contacted by him today, informing us that he is quite unwell and has an appointment with his GP on Monday 19 June 2017 at 11.00 am as the same date as his hearing.*

*We have subsequently undertaken an investigation to identify why we were not aware of the pending hearing. We have established, that he visited our offices after initial instructions were given on 20 May 2017, where we discussed the merits of his case to prepare a bundle, including amended grounds and witness statement. Additionally, at that meeting we were informed by him that his real name is [MI] and not [HR]. He had already stated this fact in screening interview and substantive interview, that his real name is [MI].*

*We accordingly requested he sign a further Letter of Authority and subsequently updated our computer systems. This appears to have caused the current issue at hand, the case details were updated whereby the case details of [HR] were replaced with [MI]. ... In effect the case file under the name of [HR] no longer existed.*

*Any subsequent correspondence was therefore not accordingly dealt with."*

The basis of the adjournment request, which I summarise, was that firstly the Appellant is suffering from a number of medical conditions for which he is receiving treatment from his current medical practitioner, therefore a medical report should be obtained to identify whether this is relevant to his asylum claim. Secondly, contact had been made with Dr Sham Qayyum associate senior lecturer in law and leadership at SOAS to prepare an expert report as to how the Appellant, as a religious teacher and imam, who has been part of Jamaat-e-Islami, could be affected if returned to Bangladesh in light of the false cases registered against him and thirdly the solicitors wished to instruct an expert in Bangladesh to confirm the veracity and genuineness of the court documents to confirm the false cases registered against the Appellant.

8. Reference was made to the relevant Procedure Rules and to the decision in Nwaigwe, however as stated earlier it appears that this request was either not received or did not reach the file in order for a decision to be made in respect of which.
9. I heard detailed submissions from Mr Danial and also from Mr Bramble who asserted that the judge was correct not to accede to the adjournment request. There had been a CMRH on 5 June 2017 and therefore the Appellant's solicitors had had an opportunity to inform the Tribunal that they were not ready to proceed and this essentially was delaying tactics on the part of the Appellant or his solicitors. He also queried why, in the letter of 16 June requesting an adjournment, reference was made to a GP appointment at 11am on 19 June, whereas the discharge summary is from the Homerton Hospital and not from the GP surgery. I permitted Mr Danial to take instructions on this point and he provided the name and address of the GP's surgery that the Appellant attended but the Appellant instructed he had left his appointment card and letters in relation to his GP at home.
10. Mr Danial submitted that the Appellant would be significantly prejudiced if he is not afforded the opportunity to address the issues raised in the Respondent's refusal letter. It was the case that the Appellant was an overstayer and had then made an asylum claim so there was no rationale for any delaying tactics and that all the Appellant sought was to have a hearing before the Tribunal in which he could put forward his claim and that the consequences of not having that opportunity, given that the claim involved asylum were potentially dire for him.

*My findings*

11. I have concluded that the First-tier Tribunal Judge did err materially in law in not adjourning the appeal of this Appellant. I have done so with some reluctance given that the reason the Appellant's solicitors were not ready to proceed was their own error in replacing the Appellant's name in respect of which he has sought asylum i.e. [HR], with what he says is his real name on their file system, with the result that they failed to engage with or properly file the hearing notice in respect of the hearing on 19 June 2017 and the CMRH hearing on 5 June 2017. Be as that may, it cannot be disputed that the Appellant is someone with health issues including the fact that he may have had a heart attack as was noted in the discharge summary from Homerton Hospital. Whilst it was not unreasonable for Judge Khan to ask for medical evidence to have been provided by midday, given that the Appellant attended A&E on a drop in basis, in light of the evidence now available, it is clear that his inability to provide evidence by midday was through no fault of his own but simply due to the fact he had to wait to be seen by doctors and tests and a diagnosis made.
12. I have also had regard in particular to the overriding objective and the decision of the Upper Tribunal in Nwaigwe [2014] UKUT 00418 IAC where the former president made clear that the test to be applied is that of fairness and whether there was any deprivation of the effective party's right to a fair hearing. It is clear from the manner in which the case then proceeded before Judge Khan, in which the Appellant's representatives were unable to play any part due to the fact they had no Appellant's bundle, no Respondent's bundle or expert evidence or an Appellant to give evidence and the fact that the judge relied heavily on inconsistencies between the evidence provided by the Appellant in his screening and asylum interviews, in order to dismiss the appeal, the absence of the Appellant and his inability to address the issues raised in a refusal decision has effectively deprived him of a fair hearing in light of the decision in **Nwaigwe** and particularly bearing in mind that the Appellant's credibility was very much in issue as raised by the Respondent in the refusal decision. For these reasons the decision by the First tier Tribunal to proceed to hear the appeal in the absence of the Appellant is unsustainable.

*Decision*

13. I set aside the decision and the appeal is remitted to the First-tier Tribunal for a hearing *de novo* to be heard by a judge other than M A Khan.
14. No anonymity direction is made.

Signed Rebecca Chapman

Date: 24 January 2018

Deputy Upper Tribunal Judge Chapman