



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

Appeal Number: PA/06795/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11<sup>th</sup> January 2018**

**Decision & Reasons Promulgated  
On 13<sup>th</sup> February 2018**

**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

**KOZHIN [I]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms G Peterson of Counsel

For the Respondent: Ms H Aboni, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Greasley promulgated on 24 August 2017, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 4 July 2017 was dismissed.
2. The Appellant is a national of Iraq, born on [ ] 2000, who arrived clandestinely in the United Kingdom on 3 January 2017, and claimed asylum upon arrival. The Appellant's claim was on the basis that he was at risk on return to Iraq following a relationship with a girl whose family

members disapproved, further to which he was beaten and stabbed by the girl's brother. The Appellant claims to have reported the matter to the police with his father but was detained for several hours until the complaint was formally withdrawn. The Appellant's brother and father received threatening phone calls from the girl's family, as did the Appellant who fled Iraq.

3. Following an interview with the Respondent, the claim was refused on 4 July 2017 on the basis that the Appellant's claimed fear was not for a reason specified in the Refugee Convention; the factual basis of his claim was not accepted; there was no risk to him from indiscriminate violence in a situation of internal armed conflict in Kurdistan under Article 15(c) of the Qualification Directive and in any event, the Respondent considered that the Appellant could internally relocate within Iraq. The Respondent did not accept that the Appellant was entitled to a grant of leave to remain in United Kingdom on the basis of private or family life but did grant limited leave him to remain in accordance with her policy for Unaccompanied Asylum-Seeking Children.
4. Prior to the appeal before the First-tier Tribunal, the Appellant's representatives wrote to the Tribunal on 31 July 2017 requesting an adjournment of the hearing listed for 16 August 2017 to obtain an expert scarring report for evidence on whether the Appellant's scars were consistent with his claim that he had been stabbed by his girlfriend's family. An appointment with an identified doctor could only be offered at the earliest on 12 September 2017, after the current listing for the appeal hearing. It is unclear from the file whether there was a written response to that request for an adjournment, but in any event the application was made orally at the commencement of the hearing before Judge Greasley. This was made on the basis that there had been funding difficulties in instructing an expert and that adjournment was essential given the Respondent's reliance on the issue of scarring in the reasons for refusal letter. The Respondent opposed the application for an adjournment on the basis that there was sufficient information before the Tribunal, including a report from the Appellant's GP referring to scarring, to enable the case to be determined fairly. The application was refused for the reasons set out in full below.
5. Judge Greasley proceeded to hear and then dismiss the appeal in a decision promulgated on 24 August 2017 on all grounds. Judge Greasley did not consider that the Appellant's claim was credible due to inconsistencies in his evidence and lack of explanation and/or supporting evidence about material parts of the claim. In particular, Judge Greasley noted the absence of any medical evidence from Iraq and no credible explanation provided as to the non-production of such evidence, although it was noted that there was some evidence from Dr Gonde in the form of an official health assessment in the United Kingdom which was taken into account.

## **The appeal**

6. The Appellant sought permission to appeal on two grounds, first that the First-tier Tribunal failed to adjourn the hearing when it was in the interests of justice to do so, involving a failure to apply the guidance dealing with vulnerable witnesses and failing to have regard to material considerations. Secondly, that the First-tier Tribunal failed to engage with the Appellant's right to respect for private and family life under Article 8 of the European Convention on Human Rights.
7. Permission to appeal was granted by Judge McCarthy on 7 November 2017 on the first ground of challenge only.
8. At the hearing before me, Counsel for the Appellant set out the background to the claim and highlighted the relatively short timetable between the Respondent's refusal letter and the listing of the appeal against it. She also highlighted that there had been both a written and oral request for an adjournment and the matter was not simply raised late on the day of the hearing.
9. Counsel for the Appellant submitted that the decision to refuse the adjournment was made on the basis of the Appellant's solicitors conduct in preparing for the appeal and in seeking an appropriate expert witness, rather than any proper consideration of the interests of fairness for the Appellant. The evidence upon which the Appellant sought to rely went directly to issues of credibility raised in the refusal which was material to consideration of his appeal in all of the circumstances. It was submitted that a proper scarring report could provide significantly more information than that which was available before the First-tier Tribunal including an assessment of the timing and causes of such scarring as well as the location of scarring which was in issue.
10. The process of obtaining an expert report on scarring was in progress at the time of the appeal hearing and an adjournment would have entailed any significant delay to the determination of the appeal. It was admitted that it was clearly in the best interests of the Appellant to have such a report and for it to be available to the First-tier Tribunal when determining his appeal.
11. The Respondent opposed the appeal on the basis that Judge Greasley directed himself appropriately when considering the application for an adjournment and gave adequate reasons for refusing it. He found that he had sufficient evidence before him, including from a medical assessment which recorded the existence of scarring and he was entitled to find that there was no need for a further report or adjournment to obtain such a report. It was submitted that the adverse credibility findings made by Judge Greasley were open to him on the evidence available and it was submitted that further medical evidence from within the United Kingdom would not be material to the reasons for the adverse credibility findings given that it could add little to the evidence already available and would be unable to corroborate the Appellant's claim.

## **Findings and reasons**

12. Judge Greasley's reasons for refusing the application for an adjournment are contained in the following three paragraphs:

*"35. I indicated to the appellant and representatives that I was not prepared to adjourn proceedings in the circumstances. I had considered my overriding obligations to ensure timely and just disposal of the appeal, together with the important decision of **Nwaigwe** of the Upper Tribunal. I indicated that no information was available as to the specific date upon which an application had been made by solicitors for an expert report, given that the refusal decision was issued in early July and there was already a medical report provided before the tribunal from Dr Jennie Gonde, which also dealt with the matter of scarring. In addition, I was satisfied the appellant would be able to give oral evidence in relation to the matter, and be assisted by experienced counsel.*

*36. Following a short adjournment so as to afford Miss Karbani an opportunity to read the appeal bundle, Ms Peterson explained that she has sought further instructions from solicitors who had indicated that they could "self grant" a request for an expert report and that this had been done on 31 July 2017. The solicitors were only willing to contact an expert whom they regularly dealt with, whilst also ensuring the professional fees fell within the relevant financial limits.*

*37. I indicated that the additional information did not cause me to change my mind as I was not satisfied that all reasonable steps had been undertaken to ensure that an expert report would be available and to serve such evidence in a timely manner and in compliance with the notice of hearing and the appeal date. I indicated that it was important in circumstances such as this not simply for solicitors to have a narrow selection pool of experts to whom to refer, but to ensure the wider pool was considered so as to ensure service of relevant evidence upon the tribunal and respondent by the time of the appeal date. There was no evidence that only one specific expert would and could be available, and must be used. There had been a failure to make a timely written application for an adjournment some days before the appeal hearing date, and the matter was only raised on the date of the appeal hearing itself. I indicated this was wholly unsatisfactory. Accordingly, the appeal would therefore proceed."*

13. Although Judge Greasley referred to the Upper Tribunal's decision in Nwaigwe (adjournment: fairness) [2014] UKUT 418, it is far from clear from the reasons he gave refusing adjournment that he applied the principles contained within it. In Nwaigwe, the Upper Tribunal found, in summary, as follows:

*"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."*

14. In the present appeal, Judge Greasley's reasons for refusal of the application for an adjournment were primarily focused on the conduct of the Appellant's solicitors and recorded, in error, that there had been no written application for an adjournment, which had in fact be made over two weeks in advance of the hearing on 31 July 2017. That was a failure to take into account all material considerations (which also included the relatively short timetable from refusal decision to appeal hearing) and placed too great an emphasis on professional conduct rather than on whether a fair hearing could still be achieved in the absence of an adjournment. The fact that the Appellant would be able to give oral evidence in relation to scarring and that there was a medical report which referred to it, did not address the real question of whether the refusal would involve any deprivation of the Appellant's right to a fair hearing. It should be uncontroversial that an expert scarring report could provide material that went far beyond that which was available from the medical report from Dr Gonde and would be of a different nature to any oral evidence which could be given by the Appellant in the course of the appeal. For these reasons the refusal of an adjournment was unfair and there was a failure to apply the correct test for consideration of the application.
15. I do not accept the Respondent's submissions that an expert report on scarring would add little to the claim and would not make any material difference to the outcome of the appeal. The appeal was dismissed on credibility grounds, including in relation to the claimed stabbing and in such circumstances, it is impossible to conclude with sufficient certainty that the appeal would inevitably have been dismissed even had the First-tier Tribunal had had the benefit of an expert scarring report. This is so even in circumstances where Judge Greasley gave a wide variety of reasons for his adverse credibility findings, which did not include the absence of a scarring report.
16. In all of the circumstances, the First-tier Tribunal made a material error of law in refusing the application for an adjournment and as such it is necessary to set aside the decision. The parties were in agreement that if an error of law was found, this case would most appropriately be remitted to the First-tier Tribunal for a de novo hearing.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

No anonymity direction is made.

A handwritten signature in black ink, appearing to read 'E. Jackson', written in a cursive style.

Signed

Date: 8<sup>th</sup> February 2018

Upper Tribunal Judge Jackson