



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13154/2016

THE IMMIGRATION ACTS

Heard at Field House
On 12th June 2018

Decision & Reasons Promulgated
On 13th June 2018

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

J R B
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Braganza of Counsel instructed by Migrant Legal Action
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Trinidad and Tobago born in 1972. She says she first came to the UK as a visitor in 2005 but returned to her country of origin. She says she re-entered the UK in June 2008 as a visitor again and on this occasion overstayed her visa.

2. The appellant made an application for asylum on 27th November 2014. Her asylum claim is based on her mental health problems (including suicidal ideation) and her lack of sight in one eye, and fear of harassment in her country of origin due to these issues, and due to her father's mental health problems, and fear that she might not receive suitable treatment on return and might die as a result. This application was refused following a full interview in 2015 in a decision dated 11th November 2016. Her appeal against the decision was dismissed by First-tier Tribunal Judge N Lodge in a determination promulgated on the 2nd March 2017.
3. Permission to appeal was granted by the Vice President of the Upper Tribunal CMG Ockelton on 12th December 2017 on the basis that the High Court had granted permission in a Cart judicial review of the refusal to grant permission to appeal.
4. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions – Error of Law

5. The grounds of appeal contend in summary that the First-tier Tribunal erred in law by failing to adjourn the hearing in the absence of the appellant. This, it is argued, was unlawful as the decision not to adjourn did not comply with Nwaigwe (adjournment; fairness) [2014] UKUT 418. Counsel had applied for an adjournment to the First-tier Tribunal on the basis that the appellant had severe mental health problems and that Migrant Legal Action had expressed concerns she might have a panic attack on the day of the hearing, and there was evidence in the appellant's witness statement that she had attempted suicide in November 2016. The First-tier Tribunal gave no reasons for proceeding with the hearing, and indicated that if there was evidence that the appellant had failed to attend due to health problems she could apply to have the decision set aside. This, it is contended, was an irrelevant consideration. There was a failure to consider whether the case could be dealt with fairly and justly in the absence of the appellant, see the overriding objective at Rule 2(1) of the Tribunal Procedure (First-tier Tribunal, Immigration and Asylum Chamber) Rules 2014. There was also a failure to consider the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance.
6. In addition, it is argued, that in determining the appeal the First-tier Tribunal failed to consider the evidence of the appellant in her witness statement, and only consider the evidence of Cath Brown.
7. Ms Braganza informed the Tribunal that the appellant was current in hospital having agreed to be an in-patient due to significant fears of self-harm by medical staff, and in the context of her having suicidal thoughts. She provided a letter from North Staffordshire Combined Healthcare NHS Trust which is undated but refers to the appellant being admitted to Harplands Hospital on 29th May 2018.

8. Mr Tufan accepted that the First-tier Tribunal had erred in law by failing to adjourn in the light of the medical evidence.

Conclusions – Error of Law

9. In Nwaigwe the Upper Tribunal held 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.”*
10. I find that the First-tier Tribunal erred in law as the appellant has shown, with supporting evidence from her medical notes that she was suffering with low mood and worried when she visited her GP the next day, and that this had led to her not going to court the previous day. The medical notes also indicate that she suffers from depression and is on medication for this condition. A supplementary statement from the appellant provides full details of how the appellant was mentally unwell, having a mental breakdown in the two weeks before the hearing; had come close to ending her life; and that she had suffered a panic attack on the day of her hearing.
11. In these circumstances I am satisfied that it was an error of law not to have adjourned the hearing so that the appellant could give evidence at her appeal as it was not procedurally fair in all the circumstances to have refused to adjourn the hearing in the context of the appellant’s mental ill-health. It cannot be said that it could not have made a difference to the outcome of the appeal if she had been able to give oral testimony, particularly as her lack of instructions at the hearing meant that Counsel was also unable to make submissions on her behalf. It is therefore appropriate to set the decision and all the findings of the First-tier Tribunal aside.
12. In light of the Senior President’s Practice Statement at paragraph 7.2(a) the remaking of this appeal is remitted to the First-tier Tribunal as the error of law has deprived the appellant of a fair hearing.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision in its entirety.

3. I remit the appeal to the First-tier Tribunal for remaking.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant due to her mental health problems.

Signed: *Fiona Lindsley*
Upper Tribunal Judge Lindsley

Date: 12th June 2018