



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

Appeal Number: EA/03444/2018

THE IMMIGRATION ACTS

**Heard at: Field House
On: 8th March 2019**

**Decision & Reasons Promulgated
On: 12th March 2019**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**Sukhjinder Singh Brar
(no anonymity direction made)**

Appellant

And

Secretary of State for the Home Department

Respondent

**For the Appellant: Ms Grell, Counsel instructed by ATM Law
For the Respondent: Mr Bramble, Senior Home Office Presenting
Officer**

DECISION AND REASONS

1. The Appellant is a national of India date of birth 22nd August 1983.
2. The short point raised in this appeal is whether the decision of the First-tier Tribunal (Judge Lloyd-Lawrie) dated 12th December 2018 must be set aside for procedural irregularity.
3. The Appellant's appeal, against a refusal to grant him a residence card under the Immigration (European Economic Area) Regulations 2006, was listed at Columbus House in Newport on the 10th December 2018. The

Appellant did not attend, nor was he represented. The matter in issue before the Tribunal was whether the Respondent had demonstrated that on a balance of probabilities the Appellant's marriage to an EEA national was a sham. In the absence of any explanation from the Appellant for the evidential matters raised by the Respondent, the appeal was dismissed.

4. The Appellant now contends that he had, on the 8th December 2018, made an application for an adjournment. He had emailed customer.services@hmcts.gsi.gov.uk to say that his baby was ill and that he was therefore unable to attend the hearing. Numerous attempts had been made to fax the same to the Tribunal but transmission could not be confirmed. The Appellant's representatives had therefore additionally emailed the adjournment request to the First-tier Tribunal.
5. The determination records the Judge Lloyd-Lawrie had put the matter back in his list and had his clerk call the Appellant's representative. The clerk had been informed that the Appellant was unable to attend because "the child" was ill. The Tribunal allowed until 11.45 for an adjournment application to be made in writing but when none was received, proceeded to hear the appeal in the absence of the Appellant. The determination notes that there was no reference in any of the paperwork to the Appellant having a child; the Judge therefore believed that the information about "the child" may in fact have related to another case.
6. I have before me the following documents:
 - i) An email sent at 12.34 on Saturday the 8th December 2018 to customer services which says the following:

"The appeal is listed in Newport however the appellant is resident in London. He is the father of a one year old child, birth certificate attached, and in full time carer of child as such he cannot attend the hearing in Newport because child is currently unwell. Appellant therefore request that this appeal is transferred to London either FTT IAC Hatton Cross or Taylor House in the interest".
 - ii) The birth certificate of a child born in Hillingdon on the 21st July 2017, with the Appellant named as the father.
 - iii) An email dated the 10th December 2018 at 9.59am sent to customer services, asking the reader to please see urgent correspondence attached. It states that all attempts to fax the same have failed as the fax number provided is giving a "busy tone".
 - iv) A fax addressed to IAC Newport containing the same text as the email at (i), accompanied by a series of failed transmission print outs from the 8th and 9th of December 2018.
7. Having had regard to that evidence I am satisfied that the Appellant did seek an adjournment, and that at least items (i)-(iii) were, unbeknownst to

Judge Lloyd-Lawrie, in the possession of the Tribunal. Whilst I agree with Mr Bramble that evidence that the baby was ill would have certainly strengthened the Appellant's case, it cannot be said that this was an application that would have failed without it. The Judge gave two reasons for refusing to adjourn: there was nothing in writing and it did not appear, on the facts before him, that the Appellant even had a child. Had the paperwork been properly filed and/or put before the Judge, both of these concerns would have been allayed.

8. I am satisfied that there has been a procedural irregularity, and that in the interests of justice the Appellant should be given another opportunity to present his case.

Decisions

9. The decision of the First-tier Tribunal contains material errors of law and it is set aside.
10. The decision in the appeal will be remade following a further hearing before the First-tier Tribunal.
11. There is no direction for anonymity.

Upper Tribunal Judge Bruce
8th March 2019