Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06019/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 16 January 2019	**On 08 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MD TOFAEL AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Hasan, a legal representative at Universal Solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and overview

1. This is an appeal by the appellant against the decision of the First-tier Tribunal to proceed with the matter as a paper hearing when there was a letter dated 10 May 2018 requesting that it proceed as an oral hearing.

2. Mr Hasan, who appears on behalf of the appellant, has submitted that First-tier Tribunal Judge Lawrence (the Immigration Judge), who heard the

appeal in Hatton Cross, ought to have acceded to the request that the matter proceed as an oral hearing rather than a paper hearing. On 10 May 2018, the Immigration Judge decided that as the appeal had been allocated to a paper list at the appellant's own request, the late request to reallocate the matter to an oral hearing would not be acceded to.

3. Before the Upper Tribunal Mr Hasan argues that it was fundamentally unfair and contrary to the requirement of common law that all courts and tribunals should act fairly for the judge to proceed in the manner he had. The appellant suffers from a form of arthritis of unknown origin, but it would be desirable, says Mr Hasan, to obtain evidence to support this and place it before a Tribunal at an oral hearing. Furthermore, the appellant should be given an opportunity to explain his case orally to the Tribunal. However, it was accepted in response to questions from me that in fact the appellant had not submitted any documents in response to the directions that were sent out by the First-tier Tribunal. The directions required that any evidence had to be supplied to the First-tier Tribunal before 10 May 2018, when the appeal papers were allocated to the Immigration Judge. In particular, if any document was to be relied on in support of the appeal it had to be served in compliance with those directions. It was the appellant who originally requested a paper hearing and paid the fee for that type of hearing and he had to be taken as cognisant with what this required.

4. When the appellant appealed the decision to the First-tier Tribunal the matter came before Judge Appleyard, the Resident Judge in Birmingham, who explained that the judge who considered the application, First-tier Tribunal Judge Lawrence, made reference to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 S I 2604 / 2014 (the 2014 Rules). His decision was based on the letter of 10 May 2018 which states: "Our instructions confirmed that the appellant wishes to attend court to give evidence and therefore we are instructed to make a request for oral hearing". The appellant was represented throughout by Universal Solicitors. Judge Appleyard made the point that the procedure for re-allocating an appeal from a paper determination to an oral hearing could have been checked by Universal Solicitors, but they failed to do so, or pay the required fee for this to be done. Therefore, Judge Appleyard decided to refuse permission to appeal in this case.

5. In the grounds of appeal Mr Hasan has referred to the relevant part of the 2014 Rules, to which reference has been made already. He points out that unless the appellant has consented to the appeal being determined without a hearing, and the Tribunal is satisfied in all the circumstances that it is correct to proceed with a paper determination, it is appropriate for the hearing to proceed as an oral hearing rather than a paper one.

Discussion

6. The trouble with Mr Hasan's argument is that the appellant's representatives had not done what they should have done and paid the relevant fee for reallocation (see rule 25 the 2014 Rules). Had the appellant's solicitors ensured that they complied with the requirements for re-allocation to an oral hearing by paying the appropriate fee, there is no doubt the appeal would have been re-allocated.

7. Perhaps more importantly, as Mr Bates submitted in opposition to the appeal, there is no reason to think that the Immigration Judge would have reached a different conclusion on the merits of the case even if the appellant had given oral evidence. However, fundamentally it comes down to an issue of fairness. I have to ask whether there was any lack of fairness on the part of the Immigration Judge and, if so, whether it resulted in a lack of adequate consideration of the merits of the appeal. I have to ask whether it would ultimately lead to a different outcome before a different judge. In other words, would it have made a difference to the likely outcome if the appellant had been given an opportunity to give oral evidence?

8. The appellant resists removal from the United Kingdom, having been refused leave to remain by the respondent on the basis of his private life on 16 February 2018. As Mr Bates pointed out, the claim was straightforward. It could have to be either challenged under either Articles 3 or 8 of the ECHR. The current grounds raise both Articles and rely on medical documents supplied to the Secretary of State which suggest that he would be deprived of medical treatment in the UK. The appellant claims that his medical condition was of an exceptional nature and it was necessary for him to remain if he left the UK to receive treatment from a rheumatologist, an internal specialist and a haematologist, which specialisms would not be available to him in Bangladesh. It is claimed that this amounted to a violation of his Article 3 rights within the terms of the leading case of **Re N [2005] UKHL 31**. Furthermore, the appellant submitted that it would be irrational to reach an adverse decision on his Article 8 rights given his strong ties with family and friends in the UK, his four years of residence in the UK, and the need to respect his personal integrity and his right to respect for his private or family life. The Immigration Judge dismissed the appeal against the refusal by the respondent to allow the application for further leave to remain under both articles 3 and 8 of the European Convention on Human Rights (ECHR).

9. Unfortunately, the appellant did not lodge any documents that tended to support those propositions in the First-tier Tribunal and there is insufficient medical evidence to back up his claim that he would suffer a serious deterioration in his physical health if he were returned to Bangladesh. This was the sort of evidence that may have made a difference to the outcome but, having had an opportunity to file that evidence in advance of the appeal before the Immigration Judge, the appellant failed to file any such evidence.

10. Therefore, I am not satisfied that had the appellant been given an oral hearing it would make any difference to the outcome given his failure to comply with the directions that had been given.

Summary and conclusions

11. Before the Upper Tribunal the respondent has adopted a largely neutral stance, but I have concluded that the respondent was right to say that the appellant's absence was immaterial to the dismissal of the appeal. The appellant had an opportunity to present all his evidence in support of his appeal but did not provide that evidence. Even he had done, he would have found it difficult to surmount the hurdle presented by the **Re N** case to any article 3 claim, as that case establishes in order to surmount the hurdle of showing that the appellant's removal from the UK would contravene his article 3 rights. His illness must be fatal and must have reached such an advanced stage that his death would be an inevitable consequence of his removal. As far as article 8 is concerned, the respondent had to balance the appellant's health needs, which may well have been better met within the U.K.'s National Health Service, with the needs of the wider population to ensure the affordability of public services and that such benefits were only allocated to UK nationals. The Immigration Judge was required to apply the overriding objective in rule 2 of the 2014 Rules. In particular, the First-tier Tribunal had to deal with the case fairly and justly. The overriding objective was served by dealing with cases in a way which was proportionate to their importance, complexity of the issues and anticipated costs and resources of the parties. I am satisfied that the appellant was given the opportunity of fully participating in the proceedings and that the Immigration Judge applied the overriding objective in deciding this appeal.

12. In those circumstances the judge was entitled to come to the robust decision which he came to. It is irrelevant that another judge may have reached a different view. In all the circumstances, I can find no material error of law.

13. No anonymity direction is made.

Decision

14. The appellant's appeal to the Upper Tribunal is dismissed.

Signed Date 5 February 2019

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 5 February 2019

Deputy Upper Tribunal Judge Hanbury