Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: HU/09234/2018
HU/09237/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 June 2019	**On 19 June 2019**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

SUHEL AHMED
JIKRA SADIYA
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr E Wilford, Counsel, Waterstone Solicitors
For the Respondent: Ms S Cunha, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants, citizens of Bangladesh, have permission to challenge the decision of Judge Mill of the First-tier Tribunal (F-tT) sent on 6 February 2019 dismissing their appeal against the decision made by the respondent on 28 March 2018 to refuse them leave to remain in the UK.

2. The appellants advance two grounds, the first contending that the judge erred in refusing to adjourn the second that he erred in failing to carry out a structured Article 8 assessment.

3. The first ground focuses on the judge's treatment of the adjournment issue at paras 14 – 15:

> "14. There was no appearance by or on behalf of the Appellants. I am satisfied that intimation of the hearing had been made to them. An earlier hearing on the appeals had been assigned for 15 January 2019. The basis of the adjournment was in respect of the Second Appellant's stated early pregnancy difficulties. An adjournment was granted on that basis and a fresh date fixed to take place on 29 January 2019. By way of letter dated 25 January 2019 the First Appellant wrote to the Tribunal seeking a further adjournment, again in respect of the Second Appellant's 'pregnancy complication'. This was accompanied by a letter dated 13 December 2018 from Newham University Hospital, NHS Barts Health Trust, referring to an appointment which the Second Appellant had on Tuesday 29 January 2019 at the antenatal department. It is clear that this appointment was a standard routine appointment and was not one of critical consequence. Indeed, the terms of the letter refer to the fact that if the appointment was not convenient then a telephone call should be made to arrange a fresh appointment. On 25 January 2019 this second application to adjourn was refused. On 28 January 2019 a further letter was received by the First Appellant by fax, again making a request for an adjournment on exactly the same grounds as before. The First Appellant stated that he would have tried to attend the appeal himself in the absence of the Second Appellant, but the appointment was urgent. The First Appellant states that the appointment is so urgent that if it is missed the Second Appellant's pregnancy related things will get more complex. There is no merit in this suggestion. There is also a lack of specification of the current up to date problems which the Second Appellant is said to be suffering from. She is not heavily pregnant. She is, on the basis of the documentary evidence earlier provided, around 12 weeks pregnant. The adjournment request on 25 January 2019 has attached to it a letter report from Dr Rajrathnam who is the Second Appellant's general practitioner. This refers to her being 11 weeks pregnant and she was stated to be suffering 'pregnancy related sickness, pelvic pains, fatigue and lethargic'. There is nothing acute certified. Both Appellant's could have attended the hearing.
>
> 15. I approached the further application for an adjournment in accordance with the decision of the Court in Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC). I considered the issue of fairness for the Appellants. I took into account the fact that lengthy detailed written witness statements were available and which had been lodged on behalf of the Appellants setting out the entirely of their cases. I took into account that none of this evidence was being challenged because there was no Home Office Presenting Officer. I was satisfied that there was no obvious issues which I required to clarify from the Appellants in

> order to reach a fair determination of the appeals. I was not satisfied that there was evidence which justified the absence of the Appellants at the appeal given that a former adjournment had already been granted and there was no supporting evidence to justify their failure to attend."

4. As pleaded, the first ground really subdivides into three. The first paragraph assails the judge's approach to the fact that a previous application to adjourn had been granted "on the same basis" as that on which he refused it. I do not find this contention persuasive. Clearly the judge considered that it was not in the interests of justice that cases should be adjourned, more so when these had already been one adjournment granted. Given that by the time he came to assess the case there had been a further written application to adjourn, refused on the papers, it was only to be expected that the judge would scrutinise the application closely, taking stock of the further evidence but also keeping in mind its prehistory.

5. The second paragraph of the challenge raised to the judge's decision not to adjourn takes issue with the judge's apparent disregard for the known medical history of the second appellant, namely that she had had a miscarriage. It is argued that it was prejudgmental of the judge to assert at paragraph 14 that there was no urgency to the appellants' expressed need to attend an appointment on the same day and "nothing acute certified" in the letter from the second appellant's GP. Taken on its own, I do not consider this paragraph discloses an error of law. The supporting evidence did not state in terms that the second appellant's medical appointment had to take priority for pressing medical reasons. It may have been unduly dismissive of the judge to have treated the second appellant as having no pressing medical needs because "[s]he is not heavily pregnant", but the judge was entitled to view adversely the lack of evidence indicating a pressing medical need for both to attend the appointment. The judge will also have been aware that the first appellant had failed to attend the scheduled Home Office interview, and that the second appellant's need to attend her medical appointment did not obviously prevent the first appellant from attending, particularly when they were notified that their second written requests for an adjournment had been refused. That said, there is an element of confusion in the judge's treatment of the supporting evidence, illustrated by the final sentence of paragraph 15 ("… and there was no supportive evidence to justify their failure to attend") – presumably the judge meant no *sufficiently compelling* supportive evidence.

6. The third paragraph of the appellants' challenge focuses on the judge's stated reason for proceeding to deal with the appeals in their absence in terms of "none of the written statements" being challenged because there was no Home Office Presenting Officer and "there were no obvious issues which I required to clarify from the appellants in order to reach a fair determination" (paragraph 15). In order to act consistently with this reasoning, the judge's assessment should have been based on taking the

appellant's evidence at its highest. In fact, however, the judge did not do so. In assessing the appellants' connections with the UK and degree of integration, the judge refused to accept the first appellant's claim to have business interests here, stating at paragraph 22:

> "22. The First Appellant refers to having invested a large amount of money in his business in the United Kingdom. There is no specification as to the name of the business nor any documentary evidence in relation to the existence of his business nor its operations nor its level of turnover nor of any tax paid. This is despite the First Appellant claiming to have paid all the relevant taxes."

7. At paragraph 23 the judge stated that he found the evidence given by the appellants regarding whether they had been continuously resident lawfully "less than candid and this impairs their credibility and reliability". The last statement is particularly troubling, since if the judge considered the appellant's credibility and reliability impaired he was doing the opposite of taking the witness statement at their highest. Such an approach was procedurally unfair.

8. In my judgment the judge's error in the treatment of the written evidence undermined his stated basis for adjourning. If he was not in fact prepared to treat their witness as credible on their face, and not in need of clarification, then he should have asked whether that impacted on his ability to make a fair determination.

9. For the above reasons I set aside the judge's decision for a material error of law.

10. I see no alternative to the case being remitted to the Ft-T (not before Judge Mill).

No anonymity direction is made.

Signed Date: 14 June 2019

H H Storey