



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

Appeal Numbers: PA/02831/2018

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 4 December 2018**

**Decision & Reasons
Promulgated
On 15 January 2019**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**WA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Clark, Jackson and Canter Solicitors

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant has appealed against a decision of the First-tier Tribunal ('FTT') dated 28 April 2018 in which it dismissed his appeal on all grounds.

Background

2. The appellant, his wife and child are citizens of Afghanistan. They travelled from Afghanistan to the UK with him. They arrived in the UK

on 20 February 2017 and claimed asylum that same day. The appellant's application for asylum was refused in a decision dated 23 January 2018. The respondent summarised the appellant's claim as follows:

"Approximately seven years ago your sister had to leave Afghanistan when a man wanted to marry her. You started to receive death threats from him after your sister left. You were detained for eight months in a private prison by this man. You met your wife [FA] roughly five years ago when she was studying next door to your house. You were communicating with your wife in secret for five months before her family found out about your relationship. Your wife's father agreed that his nephew a governor could marry [FA]. Your wife's family obtained the details of your text messages and telephone conversations. They beat her, forbid her from leaving the house and took her phone. Your wife escaped her parents' home then you both hid at your friends [E]'s for ten days. You married your wife during the time you were living in [E]'s house. Your wife became pregnant with your son and went to tell her family. She was then beaten by her brother. You left Afghanistan on 10 October 2015 with your wife and child. You have claimed that on return you, your wife and son will be killed by your wife's family."

3. The respondent went on to address each of the discrete aspects of the appellant's account in Afghanistan and did not regard his claims to be credible and therefore refused his asylum appeal. The appellant was not represented when he received the decision dated 23 January 2018 and made an application to appeal that was out of time. That appeal was received on 7 February 2018. In a decision dated 1 March 2018 the FTT granted the appellant an extension of time. Some two weeks after this on 15 March 2018 the appellant applied for an adjournment, but this was refused. In a decision that same day there was a further application for an adjournment dated 22 March 2018 in which the appellant explained that he had an offer in principle from a solicitor to represent him, but he needed to look at his documents and needed more time given that the appeal had been listed for 3 April 2018. That application for an adjournment was refused on 26 March 2018. The matter therefore came before the FTT on 3 April 2018. The appellant did not have any legal representation. I am also told that his wife did not attend that hearing as she was considered too ill to do so.
4. At the hearing before the FTT the appellant made a further application for an adjournment to enable him to seek legal representation. He indicated that he had approached several lawyers to see if they would represent himself, his wife and his child in the appeal but that they had all declined save that he had recently found representatives only able to take instructions to act after the month of April. The FTT noted that the appellant did not provide the name of the solicitor who had agreed to act for him and there was no documentary evidence to support him

having obtained a solicitor. The FTT refused to adjourn the hearing. The FTT heard from the appellant and part of his evidence included an explanation that his wife had suffered from mental health problems, that she was suicidal and being treated for depression. The FTT made extensive reference to the medical evidence that was before it concerning the wife at paragraphs 23 to 25. The FTT recognised that the wife had been diagnosed with depression and her health was somewhat fragile. The FTT noted that she had been diagnosed by a psychologist, Dr Dalaji, with mixed anxiety depression and that he had stated that she needed to have a detailed assessment to exclude any post-traumatic stress disorder. The FTT noted that there was no independent medical expert before it but was prepared to find that there were concerns surrounding the wife's mental health and there had been the input from numerous medical professionals to corroborate this.

Discussion

5. When considering whether an adjournment was necessary for the appellant to have a fair hearing, it was relevant for the FTT to take into account that there was potential evidence from his wife to corroborate his claim. After all, the appellant's claim turned mainly on what had actually happened to his wife. It was she who they claimed was subject to serious harm by family members. It was therefore important for the FTT to carefully consider whether the hearing could fairly proceed without having updated evidence regarding the wife's mental health and without knowing whether she was able to give evidence in support of the appeal.
6. Although I acknowledge that the application for an adjournment did not have the detail that one might expect, that is to give the specific name of the solicitor, it is significant that the appellant had only been granted an extension of time relatively recently on 1 March 2018. That meant that he had just over a month to obtain legal representation. He made two adjournment applications during March wherein he explained that he was having difficulties obtaining legal representation. This is not therefore an appellant who failed to act upon receiving the notice of hearing and applied for an adjournment at the last minute. He has been consistent in explaining that he did not have legal representation, although he was making his best efforts to obtain this. That must be considered alongside the medical evidence demonstrating that the wife, a potential important witness in the appeal, may be a vulnerable witness and was not available to give evidence on 3 April 2018. In all the circumstances of this case fairness required an adjournment not simply to obtain legal representation but to obtain clarity regarding the wife's ability to give evidence.
7. In AM (Afghanistan) v SSHD [2017] EWCA Civ 1123 Sir Ernest Ryder, the Senior President of Tribunals gave guidance on appeals that might involve vulnerable appellants or vulnerable witnesses. This drew attention to the Practice Direction on vulnerable appellants and

witnesses and said that that guidance ought to be followed. That guidance includes a key feature as being the early identification of issues of vulnerability in order to determine how best to approach that evidence. That guidance also makes provision for those who are unable to give oral evidence to provide evidence in another format. In refusing the adjournment request the Tribunal failed to take into account the potential that the appellant's wife was a vulnerable witness and that her evidence ought to have been taken into account with the necessary provisions made. There is no recording within the decision as to whether or not the wife was considered to be a vulnerable witness and no recording as to whether or not her evidence was considered to be relevant to the fair disposal of the appellant's claim. Although the wife was not present at the hearing, the FTT does not record in the decision that any enquiries were made as to whether or not the appellant wished to rely on her evidence to support and corroborate his. In my judgment the FTT was obliged to take this into account and in failing to do so unfairly refused the adjournment request.

Remittal

8. It follows that I find that there is an error of law in the decision of the FTT. I set it aside. This is an appropriate case to remit to the FTT because completely fresh findings of fact are necessary.
9. I do not make any directions because that will be a matter for the FTT to address. However, I observe that given the potential for the appellant's wife to be a vulnerable witness, this is a case that might benefit from a Case Management Review hearing at which time careful consideration can be given at an early stage to that issue.

Decision

10. I allow the appellant's appeal and set aside the FTT decision.
11. The matter is remitted to the FTT, which shall decide the appeal on a de novo basis.

Direction regarding anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Upper Tribunal Judge Plimmer

7 January 2019