



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

Appeal Number: PA/06592/2019

THE IMMIGRATION ACTS

**Heard at Bradford
On 2 December 2019**

**Decision & Reasons Promulgated
On 3 December 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**REGINALD [K]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Howarth

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

DECISION AND REASONS

1. The appellant was born on 25 December 1986 and is a male citizen of Botswana. He appealed the First-tier Tribunal against a decision of the respondent dated 5 July 2019 refusing him international protection. The First-tier Tribunal, in a decision promulgated on 28 August 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. The appellant asserts that the judge erred in law by refusing his application to adjourn the First-tier Tribunal hearing. The reasons advanced for the adjournment application are set out in the grounds of

appeal at [6]. The reasons include the fact that the appellant's current solicitors, Duncan Lewis, were only instructed on 8 August 2019, that is four working days prior to the First-tier Tribunal hearing. The appellant's previous solicitors had failed to attend his asylum interview or prepare a witness statement. The appellant contends that his previous solicitors had seriously let him down and that he had insufficient time to provide instructions or obtain the necessary papers from the previous solicitors so that Duncan Lewis might be able to present his case adequately to the First-tier Tribunal. Moreover, the appellant has a British child who has mental health problems. The refusal of the Tribunal to grant the adjournment meant that it was not possible to obtain a witness statement from mother of the child or to obtain expert evidence concerning Botswana.

3. Mr Diwnycz who appeared for the Secretary of State before the Upper Tribunal offered no oral submissions seeking to defend the First-tier Tribunal decision.
4. I have considered the grounds of appeal and the decision of the First-tier Tribunal carefully. In my opinion, this is a relatively rare case where the failure of the judge to grant an adjournment has led to unfairness which has infected the hearing of the appellant's appeal. It is apparent from the papers that the appellant's previous solicitors had failed to carry out a thorough and professional preparation of his appeal. It is also incontrovertible that the new solicitors had only four days between being instructed and attending the First-tier Tribunal hearing to present the appellant's case. Given that it was necessary to obtain witness statements and arguably an expert report on Botswana, it should have been apparent to the judge that there was simply not enough time for the solicitors to prepare the appeal properly. The Upper Tribunal should hesitate before identifying an error of law in a refusal of a First-tier Tribunal to adjourn a hearing. However, given all the circumstances, I am satisfied that the appellant has been denied a fair hearing and that the decision to refuse the adjournment, whilst robust, led the judge to fall into legal error. I am also satisfied that the judge directed herself to the incorrect and now out of date First-tier Tribunal Procedure Rules, that is, the rules dating from 2005 rather than those of 2014. The grounds of appeal are correct to point out that the presumption in favour of refusing adjournment in the 2005 rules has not been replicated in the current procedure rules.
5. There will need to be a fresh hearing before the First-tier Tribunal to which Tribunal this appeal is now returned for the decision to be remade following a hearing *de novo*.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*.

Signed

Date 2 December 2019

Upper Tribunal Judge Lane