



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

Appeal Number: PA/12865/2018

THE IMMIGRATION ACTS

**Heard at Cardiff CJC
On 20 June 2019**

**Decision & Reasons Promulgated
On 23 July 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**DON [H]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Miss S Rushforth, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a national of Sri Lanka, has permission to challenge the decision of Judge Roblin of the First-tier Tribunal (FtT) sent on 1 March 2019 dismissing his appeal against the decision made by the respondent on 23 October refusing his protection claim.
2. The appellant's principal ground contended that the judge was procedurally unfair in refusing the adjournment request. His wife's letter setting out his grounds of appeal states that:

“I believe the Tribunal should have notified us that they have refused my adjournment request and took away the opportunity [of] at least (appellant’s wife) participate as a witness to my husband’s case. Also my husband could have tried to participate to this hearing with the GP’s supervision if we knew this.”

3. The appellant’s grounds also took issue with the judge counting against his inconsistency in the evidence he had given at his screening interview as opposed to elsewhere when he had explained that the interview transcript was inaccurate.
4. Other grounds advanced by the appellant took issue with the judge’s refusal to accept that he was a journalist; the significance the judge attached to the fact that the appellant left Sri Lanka on his own passport; and the judge’s reliance on a mistranslation of “hall” as “hole in the ground.”
5. At the hearing the appellant attended as a litigant in person. He said he had understood there would be an interpreter present. I informed him one had not been booked. He said his English was not good but he wished to proceed. I said that I would ensure that the Home Office Presenting Officer spoke slowly and that if he had any concern about understanding what was being said, he should inform me at once. In order to assist him, I asked Miss Rushforth to go first. She submitted that the appellant had failed to attend an appeal hearing on two separate occasions and the judge’s reasons for refusing to adjourn were entirely reasonable. She argued that the appellant’s other grounds amounted to mere disagreements with the judge’s findings of fact.
6. The appellant said that he wished to apologise for his absence at the hearing before the FtT. He had produced medical evidence in advance and if need be could produce more. The First-tier Tribunal did not respond to his e-mail of 18 February. If they had he could have sent his wife. As regards other points raised in his written grounds, he needed another chance to explain his case and to have an interpreter. Because of his English he did not want to take risks of giving incorrect information. He has been experiencing a lot of problems with his children and with threats for his life.

My Decision

7. In order to address the issue of whether it was procedurally unfair of the judge to refuse to adjourn it is first of all necessary to set out what the judge said about this.
8. At paragraphs 4 – 6, under the sub-heading “Preliminary Issues”, the judge stated:

“Preliminary Issues

4. I heard initial representations from Ms Wallace as to why the hearing should proceed in the absence of the Appellant which

were as follows. On the 6th December 2018 there had been a previous adjournment. The Appellant had not attended the hearing and a decision was made to proceed in his absence. A late request to adjourn was received supported by a letter from Brecon Centre of Health dated 27th November 2018 and an e mail from the Appellant's wife dated 5th December 2018. The court was reconvened and the hearing reopened and the Adjournment granted.

5. On the 17th March 2016 the Appellant did not attend a previous hearing in relation to his immigration appeal. The Appeal was refused in his absence. The Appellant was served with notice of today's hearing. It was submitted by Ms Wallace that there was no reason the appeal could not proceed. The Appeal was listed for hearing at 10 and there was no attendance by the Appellant when the hearing commenced at 10.50.
6. Following the conclusion of the hearing at 11.10 I was handed at 1.45 a partial medical report dated 15th February from Brecon Centre for Health and an e mail from the Appellant's wife dated 15th February 2019, received by the tribunal service at 10.39 on the 19th February 2019, requesting an adjournment."

9. At paragraph 26 the judge stated:

"Evidence and Findings

26. I began the hearing by identifying Ms Wallace the presenting officer for the Respondent. The Appellant did not attend the hearing. Having heard submissions from Ms Wallace as to whether the hearing should proceed in the absence of the Appellant, which I accept, and having checked the file and noting the papers were served and that the Appellant had notice I was satisfied I was empowered to determine the appeal in the absence of the Appellant.

10. At paragraphs 46-48 the judge concluded:

- "46. The appellant's hearing was previously listed on 6 December 2018 and adjourned on that occasion. Following the conclusion of the hearing a letter from the appellant's GP dated 27 November 2018 was received indicating that the appellant suffers from depression and is very stressed and unable to attend the hearing. The report was accompanied by a supporting email from the appellant's wife. The Court was therefore reconvened and the appeal was adjourned in light of the further evidence.
47. Similarly, the hearing on 19 February proceeded in the absence of the appellant. Following the conclusion of the hearing at 11.10 an incomplete letter from the appellant's GP dated 15 February 2019 was produced together with an email from the appellant's wife. Both purported to request a further postponement of the Court hearing due to the appellant's mental health.
48. This was the second occasion that the appellant after the allocated hearing time of 10 o'clock, requested an adjournment on the basis of his depression/mental health. As the letter was not drawn to my attention until 1.45 I did not have the

opportunity to consider the same during the course of the hearing. I was satisfied the appellant, as an e mail was sent to the Tribunal on the day of the hearing, knew of the hearing, and had failed to make the application for a further adjournment in advance of the hearing when he had the opportunity to do so. This was the second occasion the Appellant on the day of the hearing requested an adjournment. Another adjournment would cause further delay and would not be in the interests of justice.”

11. The sequence of events is therefore as follows. On 17 March 2016 the appellant did not attend a previous hearing in relation to his immigration appeal. The appellant’s asylum appeal was originally fixed for Thursday 6 December 2018. The appellant did not attend. The judge concerned decided to proceed in the appellant’s absence but upon receipt of a late request to adjourn from the appellant (in the form of a letter from Brecon Health Centre dated 27 November 2018 and an e-mail from the appellant and his wife sent on 5 December), the judge reconvened and granted the adjournment. The hearing was re-fixed for 19 February 2019. On 15 February the appellant’s wife sent an email to the Tribunal saying the appellant was too anxious to attend. On 18 February the Tribunal wrote to the appellant requesting further information. On the same day the appellant sent the letter from Brecon Centre for Health dated 15 February requesting an adjournment due to the appellant’s mental health. On the 19th February there was (again) no attendance by or on behalf of the appellant. The judge commenced the hearing at 10.50. At 1.45 he was handed the medical letter dated 15 February 2019 from Brecon Centre for Health and an e-mail from the appellant’s wife, also dated 15 February 2019. He stated that they were received by the Tribunal Service at 10.39 on 19 February but the date of the email is 15th February. Both the email of 15th February and the letter from the Brecon Centre for Health had requested a further postponement due to the appellant’s mental health. Although there had been a request made by the Tribunal administration on 18th February for more information, that does not appear to have been made known to the judge, nor the fact that the appellant had sent a response enclosing the Brecon Health Centre letter on the 18th.
12. In my judgment the judge’s decision to proceed was flawed. Central to the judge’s reasoning was the belief that on their own account the appellant and his wife must have known well before the hearing that he was not intending to appear, yet they did not contact the Tribunal until after 10 a.m. on 19 February (the day of the hearing). The letter from the doctor dated 15 February notes that the appellant “has a new rescheduled court hearing coming up next week and he is feeling too anxious to attend it.” However, on the judge’s own findings - and it is confirmed by the copy of the e-mail produced by the appellant before me - the e-mail sent by his wife was sent on 15 February 2019.
13. There is no mention of this email by Judge Roblin but according to the appellant he received a letter from the Tribunal on 18 February (the day before the hearing) requesting further information. In response he e-

mailed on the same day attaching the medical letter dated 15 February 2019 from Brecon Centre for Health.

14. Whilst the appellant and/or his wife should have phoned early in the morning of the 19th to ascertain whether the case would be adjourned or not, it cannot be excluded, given the contents of the medical report and the fact that they had previously obtained an adjournment on the basis of similar medical evidence, also late-submitted, that the appellant's explanation is plausible, namely that he assumed that a further adjournment had been or would be granted. A further factor I take into account when assessing procedural fairness is that, on the basis of the medical letter, the appellant is a vulnerable witness and some allowance as to be afforded to his explanation for not attending.
15. Whilst therefore the appellant's conduct in relation to adjournment requests is to be criticised, the judge's analysis failed to consider the position from the perspective of the appellant who had sent an e-mail requesting an adjournment four days in advance and up until the day of the hearing had only received a request for further information which he had provided.
16. Accordingly, whilst the fault lies in part with the Tribunal administration in not ensuring the judge had all correspondence before him, the result has been that there was procedural unfairness in the judge proceeding with the appeal in the absence of the appellant.
17. The case is remitted to the First-tier Tribunal.
18. For the avoidance of doubt, in case the appellant should identify any medical difficulty in the way of attending for the next hearing. I direct that by the end of July 2019 he produce to the First-tier Tribunal with a copy to the Home Office a written statement setting out in detail any points he wishes to make in support of his appeal. If the appellant fails again to attend, for whatever reason, that statement will stand in lieu of his oral testimony and the judge will be able to proceed in his absence.

19. To summarise:

The decision of the FtT judge is set aside for material error of law.

The case is remitted to the FtT (not before Judge Roblin).

No anonymity direction is made.

First-tier Tribunal listing is instructed to ensure an interpreter is booked.

Signed

Date: 9 July 2019

A handwritten signature in black ink that reads "H H Storey". The letters are cursive and connected, with a distinct loop at the end of the word "Storey".

Dr H H Storey
Judge of the Upper Tribunal