Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/14142/2018

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre	**Decision & Reasons Promulgated**
On 5 August 2019	**On 16 August 2019**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

TANER [S]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Khan, Counsel, instructed by SMK Solicitors
For the Respondent: Mr D Mills, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a national of Turkey. On 7 December 2018 the respondent refused his protection claim. His appeal came before Judge Brookfield of the First-tier Tribunal (FtT). In a decision sent on 9 April 2019 the judge dismissed his appeal. At the outset of the hearing the appellant's representatives applied for an adjournment because the appellant's partner had given birth to a child a week ago and she was on antibiotics and was unable to walk or hold her child and he was required to

remain at home in order to look after the child. The judge addressed this application as follows:

> "9. Pursuant to Rule 4 of The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 a Tribunal can adjourn a hearing. I considered whether an adjournment was necessary in this case in order to deal fairly and justly with the appellant's appeal. I noted that the appellant and his partner claimed that they lived with the appellant's father and the appellant's younger brother who was two years old at the date of the appellant's interview in August 2017. I note that the mother of the appellant's brother does not live in the UK but lives in Turkey. The appellant's father has therefore been able to raise his younger son without the presence of his son's mother in the UK. I found that the evidence before me strongly suggested he would have been able to look after the appellant's partner's baby whilst she and the appellant attended the hearing. The appellant's representative advised that the appellant's partner was released from hospital on the 29th March and was on antibiotics and was unable to walk or to hold her baby. I noted that there was no medical evidence before me to advise the appellant's partner was unable to walk or to travel to the hearing to provide oral evidence. I found it to be incredible that a maternity unit would discharge a first time mother from the hospital if she were unable to walk or to hold her baby. I also noted that the appellant's partner has never lived in Turkey and that any information she could provide in relation to his asylum appeal would be information she had received from the appellant. I noted that an interpreter had been arranged for this hearing and that there had been a previous adjournment of the appeal at the request of the appellant. It is for the party applying for the adjournment to show good cause why an adjournment is necessary and produce evidence of any fact or matter relied upon in support of the application. I found the appellant, by failing to provide medical evidence that his partner is unable to walk or look after her own child has failed to show good cause why an adjournment is necessary. I refused the application for an adjournment."

2. The appellant's first ground contends that the judge's reasons for refusing to adjourn were vitiated by unfair procedure.

3. Mr Mills addressed me at the start of the hearing, stating that despite the contents of the respondent's Rule 24 notice, the respondent now accepted that the judge's refusal to adjourn was procedurally unfair. I concur with Mr Mills. There was before the judge a letter from the maternity unit manager at Royal Stoke University Hospital which made clear that the appellant's partner had experienced post-delivery complications following a Caesarean section (it also stated that the appellant was present at the birth of his partner's child).

4. From the wording of paragraph 9, it is first of all not clear that the judge had taken account of this letter from the maternity unit ward manager.

The judge simply notes that the appellant's representatives "advised that the appellant's partner was released from hospital on 29 March and was on antibiotics and was unable to walk or to hold the baby". To state immediately following that "there was no medical evidence before me to advise that the appellant's partner was unable to walk or to travel to the hearing to provide oral evidence" does not indicate that the 27 March letter from the ward manager was considered. If not medical evidence *stricto sensu*, this letter from a hospital ward confirmed that the appellant's wife (who had had a Caesarean) had had post-delivery complications. By proceeding to state that "I found it to be incredible that a maternity unit would discharge a first-time mother from hospital if she was unable to walk or to hold her baby, the judge appears not to have taken stock of the actual situation. If the judge intended to cast doubt on the reliability of the ward manager's letter, that should have been made clear, and reasons given. If the judge was rather (as seems more likely) intending to state that this letter from the ward letter did not establish that the appellant's partner was unfit to attend the hearing, then the judge should have explained why this letter was insufficient to establish this. Either way there was a lack of reasons and an incorrect reliance therefore on there being "no medical evidence".

5. In deciding whether to adjourn, the judge was obliged to consider how essential it was to the issues to be "justly determined" that the appellant and his partner were able to give evidence: see **Nwaigwe (adjournment: fairness)** [2014] UKUT 00418 (IAC). The judge was clearly right to identify that an adjournment was inconvenient (because there had been a previous adjournment) but should have noted that this was related to the same maternity that had been the subject of the previous grant of adjournment and that the ward manager letter indicated that the appellant's partner was still experiencing difficulties.

6. Plainly the judge refusal to adjourn had an impact on his assessment of the substantive issues in the appeal and the error was therefore a material one.

7. Once I indicated to the parties that I considered that the judge's refusal to adjourn was procedurally unfair, Mr Khan sought to submit that I should proceed to re-make the decision by allowing the appeal. I explained that I was not prepared to do so. From the terms of the respondent's refusal decision, it is clear that there are issues of fact that will require to be determined afresh relating to both the extent and quality of the appellant's relationship with his partner, with his partner's child; and, even if the appellant were to be accepted as having established both a genuine and subsisting relationship with his partner and parental responsibility of the child (who is a British citizen born on 23 March 2019)), there is still the issue of whether in light of the appellant's poor immigration history, (which **KO (Nigeria)** [2018] 53 treats as an indirectly relevant factor), it would be reasonable to expect the appellant's child to leave the UK.

8. For the above reasons the case is to be remitted to the First-tier Tribunal for it to make necessary findings of fact and law.

9. To conclude:

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

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

No anonymity direction is made.

Signed Date: 14 August 2019

Dr H H Storey
Judge of the Upper Tribunal