



Upper Tribunal

**(Immigration and Asylum Chamber)
001019**

Appeal Number: UI-2021-

PA-00027-2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On the 03 July 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MS RATHI MALAR KALIPPAN

(Anonymity order not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant was not represented and did not attend

For the Respondent: Mrs Nolan, Home Office Presenting Officer

Heard at Field House on 12 June 2023

Prepared On 12 June 2023

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Malaysia born on the 25 March 1987. She appeals with leave against a decision of Judge of the First-tier Tribunal Richardson promulgated on 27 August 2021 whereby he dismissed the appellant's appeal against a decision of the respondent dated 12 November 2020. That decision in turn was to refuse the appellant's application for international protection. The appellant told the respondent that she was a member of an organisation called the spider gang. They and family members were not prepared to accept that she had married a Muslim. She had been physically attacked by the gang in October 2015. Furthermore she had been forced to work in the United Kingdom in the sex trade having been trafficked here.

The Procedural History

2. This case was listed for hearing at Taylor House by CVP on 27 August 2021. The appellant sent a letter by e-mail on that day saying that she was unable to attend the hearing because she was not well and she attached to her e-mail a discharge letter from St George's University Hospital in London SW 17. This letter said that she had presented with pelvic pain but an ultrasound was normal and she was discharged with a recommendation to take painkillers.
3. The judge noted that there was a history of the appellant claiming asylum but that claim was treated as abandoned because she had absconded. He found it clear that the appellant was aware that her appeal hearing was to take place but the medical evidence produced was insufficient to merit an adjournment. The judge therefore considered that he should proceed. He dismissed the claim making no anonymity direction. It appears to be a typographical error on the first page of the determination where it is stated that an anonymity direction was made.

The Decision at First Instance.

4. The judge dismissed the appeal finding that the appellant lacked credibility in her claim. Her statements were inconsistent and her credibility was damaged pursuant to Section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 because she had travelled in and out of the United Kingdom in 2015 but had not sought asylum at an earlier stage.

The Onward Appeal

5. The appellant appealed the decision of the judge on two grounds. The first was that the judge should have adjourned the hearing because of the appellant's absence and as a result the appellant

had been deprived of a fair hearing. The grounds cited the case of Nwaigwe [2014] UKUT 148 which stated that the test of whether to adjourn was one of fairness. The second ground was that the judge had failed to carry out the proportionality assessment under Article 8 correctly. The appellant had a daughter in the United Kingdom and therefore section 55 of the United Kingdom Borders, Citizenship and Immigration Act 2009 applied and the tribunal should have considered the child's best interests.

The Hearing Before Me

6. In consequence of the grant of permission the matter came before me to determine in the first place where there was a material error of law in the decision of the First-tier Tribunal such that it fell to be set aside. If there was then I would make directions on the rehearing of the appeal. If there was not the decision at first instance would stand.
7. When the matter was called on before me there was no attendance on the part of the appellant. I was informed by the presenting officer that the appellant had been granted leave on the 13th of March 2023 under the 10 year parent rule. That leave will expire on 13 September 2025. No explanation had been received by the tribunal for the absence today of the appellant and I was satisfied that she had been duly served with notice of today's hearing. It is not for me to speculate on whether the appellant chose not to attend because of the grant of leave she now has. I am concerned only with the issue of whether in the First-tier Tribunal proceeding the appellant was deprived of a fair hearing and whether there is merit in the appellant's claim that the article 8 assessment by the judge was not carried out correctly.

Discussion and Findings

8. Dealing first with the issue of the adjournment, the test of whether to adjourn is as I have stated, one of fairness. The appellant was not required to attend in person at Taylor House for her hearing it was to be remote. She clearly had some form of access to the Internet because she was able to send an e-mail on the day of the hearing. I do not accept that she may have failed to attend the hearing because of difficulties in getting on line. The medical evidence which she gave as her reason for not attending did not indicate that she was unable to participate in a remote hearing, indeed the medical evidence appeared to show that the appellant was otherwise well and able to control her pain through analgesics.
9. In those circumstances fairness did not require the judge to adjourn the hearing. The appellant was obliged to either prosecute her own appeal or withdraw it. Pursuant to the overriding objective, Rule 2(4)

of the Tribunal Procedural Rules 2014 parties must help the Tribunal to further the overriding objective to enable the Tribunal to deal with cases fairly and justly and must cooperate with the tribunal generally. This the appellant failed to do and no good reason was given for her absence from the hearing. In those circumstances there was no material error of law by the judge in proceeding.

10. In relation to the Article 8 aspect of the matter the judge could only deal with the case on the basis of the material before him. The judge dealt with Article 8 at [26] of the determination stating that the respondent had considered whether the appellant should be granted leave on the basis of her private life but it was not accepted that the appellant met any of the requirements of the immigration rules. Neither did the respondent accept that there were very significant obstacles preventing the appellant from re establishing her private life in Malaysia. Given the evidence which the judge had (which was somewhat limited considering the lack of involvement in the appeal by the appellant) there was no reason to go behind what the respondent had said about the appellant's article 8 claim.
11. I remind myself that the burden of proof under Article 8 rests on the appellant and the standard of proof is the usual civil standard of balance of probabilities. Given the lack of evidence in support of an article 8 claim and the lack of cooperation by the appellant in this appeal, the judge was inevitably drawn to the conclusion that there was nothing of significance to support the appellant's claim under Article 8. He was therefore entitled to dismiss the claim and there was no material error of law in so doing.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I dismiss the Appellant's onward appeal

Appellant's appeal dismissed

Like the judge below I make no anonymity order as there is no public policy reason for so doing

Signed this 16th day of June 2023

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Judge Woodcraft

Deputy Upper Tribunal Judge

TO THE RESPONDENT

FEE AWARD

As the appeal was dismissed there can be no fee award

Signed this 16th day of June 2023

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Judge Woodcraft

Deputy Upper Tribunal Judge