IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001540
First-tier Tribunal No: HU/56237/2022
IA/08903/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 20 July 2023

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Faisal Nadeem **Appellant**
(ANONYMITY ORDER NOT MADE)

And

The Secretary of State for the Home Department Respondent

Representation:

For the Appellant: Mr J Dhanji, of Counsel, instructed by Rashid & Rashid Solicitors.
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer.

Heard at Field House on 28 June 2023

Decision

1. The appellant, a national of Pakistan, born on 23 July 1987, appeals against a decision of Judge of the First-tier Tribunal L K Gibbs (hereafter the "judge") who, in a decision promulgated on 29 March 2023 following a hearing on 28 March 2023, dismissed his appeal against a decision of the respondent of 2 September 2022 to refuse his application of 10 August 2021 for leave to remain on the basis of his relationship with his partner, Ms Elena Anastasova Stoeva (hereafter the "sponsor"), and on human rights grounds (Article 8, private and family life). The appellant brought his appeal on human rights grounds.

2. In the decision letter, it was accepted that the appellant had a genuine and subsisting relationship with the sponsor.

3. The judge refused to adjourn the hearing at the request of the appellant who attended the hearing in person. The judge dealt with this issue and the appellant's *"disappearance"* from the hearing at paras 3-5 of her decision which read:

> "3. The appellant attended the appeal hearing. He was unrepresented and requested an adjournment. The basis of the adjournment was that Ms. Stoeva was in Bulgaria. In answer to my questions he told me that she had left the UK 3 months ago because of family problems. His solicitors, Rashid and Rashid were not attending the appeal hearing

because he had not paid sufficient money and had advised him to apply for an adjournment. Ms. Huber opposed the adjournment application on the basis that the appellant had had notice of the hearing and should have ensured that his wife was able to attend / should have applied for an adjournment at an earlier opportunity.

4. I decided to refuse the adjournment application. I was satisfied that the appeal had been professionally prepared and that I had witness statements from the appellant and his partner before me. **The credibility of the relationship was not in issue** and in my view it was not necessary to adjourn for a fair hearing. Further, I was mindful of the fact that the appellant, his partner and legal representatives had been given ample notice of the date of the appeal hearing, and in my view should have been properly prepared to go ahead. Taking into account the over-riding objective and considering the issue of fairness I was satisfied that it was appropriate to proceed.

5. I explained my decision to the appellant. I told him that if he wanted to take time to contact his legal representative to inform them of my decision and to ask them to attend to represent him I was happy to allow him time to make the telephone call and to arrange court time to accommodate the appeal hearing. The appellant thanked me and went to contact his legal representative. This was at around 11am. By 12.30pm the appellant could not be found and I made the decision to proceed in his absence. The document before me was the stitched bundle created on 15 February 2023."

(my emphasis)

4. Having said at para 3 that credibility was not in issue, the judge allowed the Presenting Officer to change the respondent's stance and take issue with the genuineness of the appellant's relationship with the sponsor. She dealt with this at para 8 of her decision which reads:

"8. Prior to the appeal hearing the respondent did not challenge the genuine nature of the appellant's relationship with Ms. Stoeva. In submissions however Ms. Huber changed that position on the basis of Ms. Stoeva's failure to attend the appeal hearing and the appellant's disappearance. I am inclined to be persuaded by this submission. I find that if Ms. Stoeva genuinely supports the appellant's claim to remain in the UK she would have ensure *[sic]* that she was available to attend the appeal hearing. As it was she did not, did not provide evidence of her whereabouts or reasons for being absent and made no offer to give evidence remotely. Equally, I find that the appellant's disappearance from the hearing centre despite being aware that his appeal was due to proceed casts doubt on his credibility. It appears that he was seeking to evade scrutiny of his claim."

5. The judge then went on to consider the Article 8 claim in the alternative, i.e. if the relationship was genuine, at paras 9-12 which read:

"9. However, even if I am wrong and the couple are in a genuine relationship the fact remains that there is no evidence before me to persuade me that they would face very significant obstacles in establishing their family life outside of the UK.

10. In reaching this conclusion I rely on the fact that both the appellant and his partner are in good physical health. Further, both have shown themselves capable of adapting to life in a new country (including learning a new language), where neither previously had ties, and certainly from Ms. Stoeva's perspective, finding employment and being self-sufficient. I find that there is no evidence before me to suggest that the couple could not find employment in Pakistan, and Ms. Stoeva would have the benefit of the appellant's support (and his family's) in integrating in Pakistan. Although I accept that the appellant has lived in the UK for nearly 13 years I find that he has nonetheless spent the majority of his life in Pakistan. He does not claim to have lost linguistic or cultural ties and I am satisfied that the couple would be able to maintain friendships made in the UK through modern means of communication, as well as establish new friendships in Pakistan.

11. I find that the evidence before me is simply that the couple would prefer to remain in the UK, but I am not persuaded that there is evidence before me to meet the threshold of insurmountable obstacles.

> 12. For the same reasons I am not persuaded that the appellant would face very significant obstacles to integration in Pakistan. Further, I am not persuaded that the decision is disproportionate when balanced against the public interest in maintaining immigration control."

6. The grounds contend:

   (i) Ground 1: The appellant, being unrepresented at the hearing and with no experience of immigration law or attending court hearings and without his partner being present, was under "*incredible stress and anxiety*" and he was later unable to return to court.

   (ii) Ground 2: The judge unfairly allowed the respondent to challenge the genuine nature of the appellant's relationship with the sponsor upon the respondent's representative learning of the sponsor's absence and the appellant's disappearance from the hearing mid-way. The judge failed to allow the appellant to advance submissions on the changed position.

   (iii) Ground 3: The judge also erred in her assessment of whether there were insurmountable obstacles to family life being enjoyed outside the United Kingdom and whether there were very significant obstacles to the appellant's reintegration in Pakistan.

7. At the hearing before me, Mr Dhanji submitted a witness statement dated 28 June 2023 from the appellant in support of ground 1.

8. In his witness statement, the appellant said, inter alia, that he found it very difficult to express himself in English at the hearing before the judge because there was no interpreter to help him. He tried his best to explain to the judge why his wife was not able to attend the hearing and to ask for an adjournment to a date when his wife could attend. The judge refused his adjournment request and told him to call his solicitors and see if they could attend or send a barrister. When he called his solicitors, they said they would try to send someone. He waited in the waiting area outside the court room until his solicitors rang him an hour later and said that they could not find a barrister at such notice. He then panicked. In his witness statement, he said:

> "5. I was already very stressed and nervous and the thought of going back into Court by myself to speak to the judge was very frightening. I was too anxious to go back in and so I left.
>
> 6. In hindsight, I made a mistake. I should have stayed to speak to the judge. However, I was not thinking straight under the pressure I had built up in my mind about the situation I found myself in."

9. The appellant's evidence in his witness statement that there was no interpreter and that there were language difficulties is supported by the minutes of the Presenting Officer, a copy of which Mr Walker submitted at the hearing before me. The relevant part of the minutes reads:

> "Language difficulties – appellant was asking for an Urdu interpreter but haven't requested it before hearing"

10. It is clear, from all of the above, that, when the judge was considering the appellant's application to adjourn the hearing, she was aware not only that the appellant had difficulty in expressing himself including in relation to his request to adjourn the

hearing and the reason for the adjournment request but also that the lack of an interpreter meant that the appellant would be unable to give his best evidence at the hearing if the hearing proceeded. Given that there was no interpreter to assist the appellant in giving his evidence if the hearing proceeded, the judge ought to have adjourned the hearing at that point, notwithstanding that no request had been made prior to the hearing for an interpreter to be provided. This alone vitiates the judge's decision to dismiss the appeal irrespective of the later events, i.e. the appellant's failure to return to the courtroom.

11. It was also unfair for the judge to permit the Presenting Officer to raise a new issue in the appellant's absence without notifying the appellant of the new issue.

12. In my judgment, an independent fair-minded third party observing the proceedings would inevitably conclude that the unfairness that arises on account of each of the matters explained at my paras 10-11 above are sufficient, taking each in isolation, to vitiate the judge's decision to dismiss the appeal notwithstanding her alternative reasoning at paras 9-10 of her decision. In any event, I agree with Mr Dhanji that the judge's assessment at paras 9-10 of her decision was inevitably influenced by her assessment at para 8 notwithstanding that she did not state at paras 9-10 that she relied upon the appellant's and his partner’s absence from the hearing.

13. For all of the above reasons, I set aside the decision of the judge in its entirety.

14. As the appellant has been deprived of a fair hearing, para 7.2(a) of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal applies.

15. This appeal is therefore remitted to the FtT for a fresh hearing on the merits on all issues by a judge other than Judge of the First-tier Tribunal L K Gibbs.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside in its entirety. This appeal is remitted to the First-tier Tribunal for a fresh hearing on the merits on all issues by a judge other than Judge of the First-tier Tribunal L K Gibbs.

Signed: Upper Tribunal Judge Gill Date: 29 June 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal’s decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**
3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**
5. **A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**
6. **The date when the decision is “sent’ is that appearing on the covering letter or covering email**