



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

Appeal Number: AA/04481/2014

**THE IMMIGRATION ACTS**

**Heard at Stoke**

**on 8<sup>th</sup> December 2014**

**Determination  
Promulgated**

**on 9<sup>th</sup> December 2014**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**ZORAN EAZADEN KHTO  
(Anonymity direction not made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Sarwar instructed by Immigration Advisory Service (UK) Ltd

For the Respondent: Mr McVeety – Senior Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge Heynes promulgated following a hearing at Manchester on the 31<sup>st</sup> July 2014.
2. The Judge records the outcome of an application to adjourn made by the Appellant's representatives at paragraphs 7 to 11 of the

determination. This was a renewal of an application made on the papers on the 28<sup>th</sup> July 2014 following the Appellants previous representative having to withdraw as a result of a conflict that had arisen, the nature of which was not explained.

3. The basis of the adjournment was that the new representatives, Immigration Advisory Services (UK) Ltd, had only been instructed on the 23<sup>rd</sup> July 2014. Instructions had been taken from the Appellant but it was said that there was insufficient time to prepare for the hearing. A Mr Ahmed of that firm attended but when the adjournment request was refused he withdrew his representation.
4. The grounds of challenge assert, inter alia, that the adjournment should have been granted as the Appellant was at a substantial disadvantage in presenting her case as she did not have the benefit of legal representation, including her file of papers from her previous representatives. It is said the Judge erred as he failed to consider whether there may be additional documents or information in that file.

## **Discussion**

5. I accept that an incorrect refusal to grant an adjournment can amount to an error of law. In R(on the application of AM (Cameroon) v AIT [2007] EWCA Civ 131 the Court of Appeal said that unfair decisions on interlocutory matters, such as adjournments or the admission of evidence, can amount to errors of law. Such decisions will have to be grounds for arguing that they display gross procedural unfairness or a complete denial of natural justice.
6. The 2014 Procedure Rules Rule, 4(3)(h), empowers the Tribunal to adjourn a hearing. Rule 2 sets out the overriding objectives under the Rules which the Tribunal "must seek to give effect to" when exercising any power under the Rules. It follows that they are the issues to be considered on an adjournment application as well. The overriding objective is to deal with cases fairly and justly. This is defined as including "(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal; (b) avoiding unnecessary formality and seeking flexibility in the proceedings; (c) ensuring, so far as is practicable, that the parties are able to participate fully in the proceedings; (d) using any special expertise of the Tribunal effectively; (e) avoiding delay so far as compatible with proper consideration of the issues".
7. The issue, in effect, comes down to fairness. In Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) it was held that if a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations;

permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing.

8. Thus, where an adjournment refusal is challenged on fairness grounds it is important to recognise that the question for the Upper Tribunal is not whether the First-tier Tribunal acted reasonably but that of fairness. Was there any deprivation of the affected party's right to a fair hearing?
9. The absence of a representative is not of itself determinative. In DMK, Petition for Judicial Review of a decision by the Secretary of State for the Home Department [2012] CSOH 25 the IAS withdrew representation one week before the hearing because of differences in the Appellant's account. The Claimant asked for an adjournment because he did not have a solicitor. The Immigration Judge refused as he had had sufficient time to instruct legal representation and his case could be justly determined as all of his witnesses were present. The Court held that this was not the case of a last minute withdrawal or other failure by a prior representative. The Claimant had brought his witnesses and did not suggest that there was other evidence that he needed time to gather. It was not unusual for parties to represent themselves before a specialist tribunal. The provision of appropriate assistance to parties in such circumstances was a routine part of the work of a tribunal judge and formed part of their judicial training. Parties did not have any absolute right to be represented at fast track hearings. The Judge had exercised her discretion in a proper judicial manner and her ultimate decision was one which was open to her in the circumstances (para 46).
10. In HH (Iran) v SSHD [2008] EWCA Civ 504 the Immigration Judge refused to adjourn to enable the Appellant to find a representative even where the Asylum Support and Resource Team had asked for more time to review the file to decide whether to represent him. The Court of Appeal said that it was common enough for Tribunals to deal with unrepresented claimants if there was no point of law to be decided. Here the simple question was whether the Appellant had given a truthful account and the decision to refuse the application was within the discretion of the Immigration Judge. Article 6 of the ECHR was not engaged. It was impossible to say that legal representation was indispensable in this case. The state was not compelled to provide the assistance of a lawyer for every dispute involving a civil point in any event.
11. This is not a case of an Appellant finding herself unexpectedly without legal representation at a hearing at which it was apparent that professional representation would be of benefit. Judge Heynes was of the opinion there was sufficient evidence available to enable the

issues to be justly determined and that the factual basis of the claim was relatively simple. The Judge noted that the core element of the claim was an assertion the Appellant will be at risk from members of her village who were of the Yazidi faith as a result of a relationship she had formed with a Muslim man in Iraq. As a result the Appellant stated she was forced to flee with this man although they became separated in transit. That is a factual and not complex legal claim. The Judge noted the evidence relied upon and having examined the same found the Appellant had failed to substantiate her claim to be a follower of the Yazidi faith, to have been dishonest in relation to her account of how she left Iraq and elements of her journey to the United Kingdom, and in relation to her chance encounter with a friend of her father in Liverpool. The Judge dismissed the core of the claim as lacking credibility.

12. The Record of Proceedings notes that at the hearing, following the withdrawal of Mr Ahmed, the Judge took time to explain matters to the Appellant with the assistance of the appointed interpreter. It is also recorded that appropriate questions were asked of the Appellant by the Judge as a result of which she confirmed her statement dated the 21<sup>st</sup> May 2014 was true. The Appellant was cross examined and replied to the questions put to her. Thereafter submissions were made by the Presenting Officer. The Judge then summarised the issues and provided the Appellant with a further opportunity to address the Tribunal in her replies, which she did. The record indicates the Judge was aware of the Appellants situation, ensured she received a fair hearing in that she understood the relevant issues and was given an opportunity to answer questions and address the Tribunal. The Judge then considered the evidence in its entirety before setting out the findings made which are within the range of findings the Judge was entitled to make on the evidence.
13. The application made by Mr Ahmed did not refer to a wish to trace witnesses or of a witness not being available on the day or the need to obtain specify country information. The submission made today that a representative may have been able to elicit points of relevance through questioning or submissions is speculative and not supported on the facts.
14. No evidence has been provided today of complex legal issue which may have required representation at the time. In the intervening period from 23<sup>rd</sup> July 2014 to the date of the hearing Mr Sarwar was unable to assist with a description of any work undertaken by Immigration Advisory Services (UK) Ltd or to confirm whether the previous representative's file of papers has now been received and whether there was anything in the same of relevance.
15. The fact Mr Ahmed withdrew is no basis for granting an adjournment per se. That is a matter between him and his client and it cannot be

case that the mere fact of a representative withdrawing is permitted to 'blackmail' or determine the outcome of proceedings. The assertion that if a representative had been present he or she would have assisted is noted but the fact Mr Ahmed chose to withdraw denied such representation.

16. A bundle has now been filed containing a number of documents including an unsigned and undated statement purportedly from the Appellant, a letter from a Mr Alo dated 2<sup>nd</sup> December 2014, a document described as a Statement of the affiliation to the Yazidi community dated 26<sup>th</sup> November 2014 written from an address in Germany and referring to a detailed examination but providing no further details, and documents from Iraq, none of which were before the First-tier Tribunal or even in existence at that time and the majority of which have only come into existence very recently. There is the option of a fresh claim being made based upon such additional information if the Appellant is so advised. On the facts as presented the Appellant has failed to substantiate her claim not to have received a fair hearing before Judge Heynes.

**Decision**

17. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

18. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 8<sup>th</sup> December 2014