



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

Appeal Number: AA/01283/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 10 August 2015**

**Decision & Reasons Promulgated
On 20 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**QA
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Gill QC, Counsel instructed by Goodfellows Solicitors
For the Respondent: Mr T. Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. In a decision promulgated on 29th April 2015, the First-tier Tribunal dismissed the appellant's appeal against the respondent's refusal to grant her asylum or humanitarian protection.
3. The appellant is a national of Pakistan born on 25 December 1959. She is an Ahmadi Muslim. Between 1997 and 2014 she visited the UK lawfully on several occasions. On 10 November 2014 she arrived in the UK and claimed asylum on arrival. The basis of her asylum claim is that shortly before coming to the UK she was involved in discussions about her Ahmadi faith which lead to allegations of blasphemy being made against her and that she now fears persecution.
4. The respondent did not accept the appellant's claim and in a decision dated 9 January 2015 described her as having provided an invented narrative and having supplied fabricated documents. The appellant appealed and her appeal was heard by Judge M A Khan ("the judge") on 8 May 2015.
5. At the outset of the hearing, the appellant applied for an adjournment on the basis that the respondent's bundle was only served at 4pm the day before the hearing (despite reminders being sent) and consequently the appellant had not had a fair opportunity to prepare. The respondent did not object to the application. The bundle included, *inter alia*, three verification reports which had not been seen previously by the appellant and which contained evidence supporting the respondent's allegations against the appellant. The appellant submitted to the judge that she needed an opportunity to carry out her own investigation and provide further evidence.
6. The judge refused the application for an adjournment. At paragraph 8 he explained his reasoning as follows: "Having heard both representatives I considered that the documents in the appellant's bundle would be in the appellant's knowledge and the information in the verification report is clearly mentioned in the refusal letter, which had been in the appellant's solicitor's possession since January 2015..." The judge, however, agreed to hear the other case on his list first in order to give the appellant's representative's time to take further instructions as necessary. When the matter returned to court the appellant renewed her application for an adjournment, elaborating on the reasons she had given earlier. The judge recorded at paragraph 9 of his decision the appellant's argument that because the respondent seriously challenged her credibility her representatives needed to obtain evidence to rebut the newly furnished evidence. No objection to this was made by the respondent. Nonetheless, the judge, at paragraph 10, reiterated the position he had stated earlier: that there had been sufficient time for the appellant to collect evidence as she had known since January 2015 the nature of the challenge to her claim. At this point the appellant's representative refused to take any further part in the proceedings.

7. The judge then heard submissions from the respondent. It is apparent from his decision that in considering the appeal he has had regard to the late served evidence including the verification reports. The judge made adverse credibility findings against the appellant, describing her evidence as neither credible nor consistent. He dismissed the appeal.
8. The grounds of appeal submit that refusal to adjourn the hearing was unfair and unreasonable. Objection is also made to the judge taking the late served evidence into account without the respondent having made an application to extend time. The appellant also raises several grounds of appeal challenging the substance of judge's approach to the appeal.
9. At the hearing Mr Gill reiterated the arguments made in the grounds. Mr Melvin argued that the appellant was not – and has not shown that she was – prejudiced by the failure to adjourn. The refusal notice made clear the basis of the challenge made to her claim and therefore there had been sufficient time to prepare her evidence.

Discussion

10. Under Rule 4(3)(h) of the Tribunal Procedure Rules 2014 a First tier Tribunal Judge has the power to adjourn a hearing. Pursuant to the overriding objective, as set out in Rule 2, the Tribunal must deal with cases fairly and justly.
11. The key consideration is whether the appellant, in consequence of her adjournment request being refused, was deprived of a fair hearing. The position is set out in **Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC)** at paragraphs 7 and 8:

“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. 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 FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing? Any temptation to review the conduct and decision of the FtT through the lens of reasonableness must be firmly resisted, in order to avoid a misdirection in law. In a nutshell, fairness is the supreme criterion.

The cardinal rule rehearsed above is expressed in uncompromising language in the decision of the Court of Appeal in SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284, at [13]:

“First, when considering whether the immigration Judge ought to have granted an adjournment, the test was not irrationality. The test was not whether his decision was properly open to him or was Wednesbury

unreasonable or perverse. The test and sole test was whether it was unfair”.”

12. This is a case in which the respondent made serious adverse credibility findings against the appellant but only disclosed several documents supporting those findings the day before the hearing. As recorded in the judge’s decision, the appellant made clear to the judge that she did not feel able to proceed unless she had time to consider, respond to, and obtain and prepare evidence to counter, the newly disclosed evidence. The respondent did not raise any objections. The judge’s comment that the appellant already knew the substance of the allegations against her does not adequately deal with the point that until the day before the hearing the appellant did not know what was contained in the evidence underlying the allegations.
13. I am unable to discern from the judge’s decision that he addressed the question of whether proceeding without an adjournment would deprive the appellant of a fair hearing. Such an assessment is necessary in any case where an adjournment is applied for but particularly in an asylum case, such as this, where the highest standards of fairness must be applied. In this appeal, the appellant’s credibility was of central significance and the late served evidence clearly pertained to this issue. Proceeding without giving the appellant an opportunity to properly consider and respond to this evidence deprived her of a fair hearing. Accordingly, I consider that the judge erred in law by refusing the adjournment application.
14. Having regard to section 7.2(b) of the Practice Statement of the Immigration and Asylum Chambers of the First-tier and Upper Tribunal, I find that the appeal should be remitted to the First-tier Tribunal for re-making.
15. At the conclusion of the hearing the appellant applied for costs on the basis that the respondent’s Rule 24 notice was contrary to the position taken at the First-tier Tribunal where the respondent had not objected to an adjournment. Mr Gill’s submission was that the respondent ought not to have opposed the appellant’s appeal on this ground and had they not done so significant costs would have been saved. I have considered the appellant’s application but am not satisfied that the respondent has acted unreasonably or in a way that justifies the making of a costs order. Accordingly, no order for costs is made.

NOTICE OF DECISION

- a) The decision of the First-tier Tribunal contained errors of law such that it is set aside in its entirety and the appeal is to be heard afresh.
- b) An anonymity Order is made.
- c) The appeal is remitted to the First-tier Tribunal for hearing afresh before a judge other than Judge M A Khan.

Signed
Deputy Upper Tribunal Judge Sheridan

Dated