IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/40069/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22 April 2015	**On 29 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MRS DIL MAYA TAMANG
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Peterson, of counsel
For the Respondent: Ms Brocklesby-Weller, a Home Office Presenting Officer

DECISION AND REASONS

1. There is before me an appeal against a decision of the First-tier Tribunal sitting at Birmingham on 7 January 2015 when the Immigration Judge (Judge of First-tier Tribunal Lloyd) decided to proceed with an appeal by the appellant against a decision to refuse her indefinite leave to remain. That application for ILR was on the basis that she was a victim of domestic violence. The Immigration Judge considered all the evidence before him but concluded that the appellant failed to meet the criteria of the relevant Rule which is set out in paragraph 289A of the Immigration Rules.

Specifically she failed to meet the criterion in subparagraph (iv) of that paragraph.

2. The history of this matter is that the appellant had been in the UK since 2010, after coming here initially as a student, but she had made a fresh application on the basis that she was a victim of domestic violence on 15 August 2014. That was refused and the Secretary of State made removal directions. Her leave was due to expire, I have been told, on 16 October 2014. Unfortunately her former legal advisers Messrs AM Legal Consultants UK Limited got into difficulties and I have been informed that they effectively ceased to practise and therefore ceased to act for the appellant on 7 November 2014.

3. On 11 November 2014 a notice of hearing was sent out to the appellant and, directions having been made for the hearing, the notice of hearing indicated that it was in a reserve list, which means that the appellant may have to wait at court for her case to proceed and sometimes that would involve waiting until the afternoon but she was advised to attend the hearing at 11am on the day of the hearing as every effort would be made to hear the case on that day. The Tribunal acknowledged the request from the former solicitors that they go off the record and the new solicitors, who are Messrs Hebbar & Co, replace them.

4. An application by Hebbar & Co for an adjournment of the case was made on 5 January to the Tribunal. It was supported by a letter of authority dated 17 November 2014 from the appellant. The application, which was considered on 6th January 2015, was refused because it was considered that the representatives, who had had conduct of the matter since the previous November, had an adequate opportunity to prepare for the hearing. It was ordered, therefore, that the appeal should remain in the list. There was a renewed application before the court on the following day when, contrary to the notice that had been sent out, only the Home Office Presenting Officer attended the hearing. It seems that the request for the adjournment was made by fax or some written form but it was considered by the Immigration Judge. The Immigration Judge had regard to the fact that neither the appellant, nor anyone on her behalf actually attended the hearing to explain the basis for the adjournment. In the circumstances it was decided that it was not appropriate to adjourn the case and the FtT proceeded to hear submissions from the respondent and deal with the matter as best he could on the evidence before him.

5. Ms Peterson, who appears for the appellant in this matter and has presented the arguments very fully and forcefully. She fairly makes the point that, based on the evidence presented before the judge, it could not be said that he made an error of law. The error he is said to have made is not to have adjourned a case that he should have adjourned. Rule 2 of the Tribunal Procedure (First-tier Tribunal) Rules 2014 requires the Tribunal to apply the overriding objective of dealing with cases fairly and justly. The Tribunal has traditionally taken a fairly robust approach to adjournment applications and it is not my reading of the 2014 Rules that they were

intended to effect a relaxation in approach, although they may be expressed in more flexible language. The FtT must consider the interests of justice, deal with cases in a manner proportionate to the complexity of the issues considering the anticipated costs, the resources of the party and the resources of the Tribunal and ensure a level playing field for the parties. It must also avoid delay wherever possible and this needed to be judged not just from the viewpoint of the appellant and the respondent but also from the wider aspect of other appellants who are waiting for their appeals to be heard. However, Rule 4 contains an unfettered discretion to adjourn a case where it is necessary and in the interests of justice to do so.

6. I am satisfied that the judge had a discretion to grant an adjournment but in my view it cannot be said that it was a material error of law for him to have exercised his discretion against granting an adjournment. Ms Peterson would have to surmount the hurdle of showing that the manner in which the Immigration Judge exercised his discretion was outside a reasonable range of responses so as to make it unlawful but in my view there were sound reasons, which the judge gave, for not adjourning this case. The appellant's new legal representatives had been acting since the previous November and, with respect, they should have taken appropriate steps to prepare for the hearing whether or not they were still awaiting information from the Home Office before they felt were in possession of all available information. The appellant either through herself or through her representatives had already presented a good deal of evidence in support of her domestic violence allegation and it was open to the new representatives to take instructions from her based on her instructions and update the evidence in the light of the circumstances as they were at the hearing on 7 January. This was a straightforward case and in many cases the Home Office will informally assist appellants at hearings where they are not in possession of all the documents. The present representatives simply failed to take adequate steps to prepare for the hearing.

7. Furthermore the appellant could have attended the hearing and whilst I have some sympathy with her if it was not spelt out to her by her representatives that she should attend the hearing, I am afraid that she has to take responsibility for that failure as the notice of hearing makes clear that the Tribunal would proceed with her case whether or not she attended. Furthermore, unfortunately, she is responsible for the acts or omissions of her agents. It is an unfortunate fact that in this country where solicitors or legal representatives are appointed to act, but they fail to do so to the required standard, their client ultimately takes responsibility for that. I further have some sympathy with the appellant because she appears to have been poorly served by her first solicitors and, possibly, was not well served by the second solicitors. However, I found that this is not a case where it can be said that there was a failure of the judge to exercise his discretion properly and in accordance with the overriding objective summarised above.

8. I should add that I am also not persuaded that the new evidence described by Ms Peterson today, for example updating medical evidence, further letters and emails and a more detailed witness statement from the appellant, would necessarily have led the FtT to a different conclusion in relation to the appellant's appeal. As I say, this is a case where had the appellant attended the hearing it may be that she may have made a greater impression on the Tribunal than simply her written evidence but the judge did consider all the evidence and reached a conclusion that he was entitled to come to based on that evidence .Therefore, regrettably, I must dismiss the present appeal. I find no material error of law in the decision of the First-tier Tribunal.

Notice of Decision

The appeal is dismissed. The decision of the FtT to dismiss the appellant's appeal to that Tribunal stands.

No anonymity direction was made and that decision also stands.

Signed Date **28 April 2015**

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

The judge below dismissed the appeal and therefore there can be no fee award.

Signed Date **28 April 2015**

Deputy Upper Tribunal Judge Hanbury