



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

Appeal Number: IA/01477/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 March 2016**

**Decision &  
Promulgated  
On 13 July 2016**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE STOREY**

**Between**

**MANSOR ALI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr K Khan, GK Associates

For the Respondent: Mr E Tufan, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan. He arrived in the UK in December 2009 with leave to enter as a Tier 4 (General) Student. He was subsequently granted extensions of stay until 14 October 2014. On 13 or

14 October 2014 he applied for further leave to remain based on being dependent on his parents and being in a relationship with a European national. On 17 December 2014 the respondent refused this application. He appealed stating shortly that the decision was not in accordance with the law or Article 8 ECHR as he had close family members in the UK and had an established private life. His appeal was fixed for rehearing on 28 July 2015.

2. On 27 July the appellant sent a letter requesting an adjournment. It said he was unable to attend as he had fallen down stairs, he had difficulty in working and was in pain. His letter enclosed a form Med 3 issued by his GP dated 24 July 2015, stating that he was not fit for work for the period 24 July 2015 to 7 August 2015. The First-tier Tribunal refused that application.
3. On 28 July the appellant failed to attend the hearing nor did anyone attend on his behalf. His case was then dealt with “on the papers” by First-tier Tribunal Judge Malcolm who in a decision sent on 2 September 2015 dismissed his appeal. In the course of his written decision the judge noted the application for an adjournment.
4. The grounds of appeal contend that the decision of the judge was procedurally unfair as the effect of dealing with the case on the papers was to deny the appellant a fair hearing. In amplifying the grounds Mr Khan has submitted that there were substantive Article 8 issues in play because the appellant had family here who were British citizens; the appellant had submitted medical evidence; the Tribunal Administration should have notified him that his adjournment request had been refused, but failed to do so; if they had, her parents could have attended the hearing as the very least’ the appellant was unrepresented.

### **Relevant Law**

5. There is ample case law on adjournments. I do not propose to summarise this here, but illustrative of that case law is the reported decision of the Upper Tribunal in **Nwaigwe (Adjournment; fairness) [2014] UKUT 418 (IAC)** whose head note states :

“If a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law on several respects: these include a refusal to take into account all material considerations; permitting immaterial consideration to intrude, denying the party concerned a fair hearing, failing to apply the correct test; and acting irrationally. In principle, 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? See SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284."

6. I am not persuaded that the First-tier Tribunal erred in law in proceeding to determine the case in the absence of the appellant. There are several reasons which lead me to this conclusion.
7. First, the medical evidence submitted verified only that the appellant was unable to work, it did not indicate that he was unfit to attend a hearing of his appeal. The appellant's reference in his grounds seeking permission to the GP confirming his "inability to walk, which restricted me to attend the hearing" is inaccurate and incorrect.
8. Second, there is nothing to show (and the appellant does not contend) that he took any action either on the day before the hearing or in the morning of the hearing to ascertain whether his adjournment request had been granted. He had no basis for assuming that it would be.
9. Third, despite Mr Kahn stating that the appellant's parents would have attended if they had known the adjournment request had been refused, nobody attended the hearing – not his parents nor anyone else on his behalf. It was the heart of his case that he was dependent on his parents.
10. Fourth, in advance of the hearing before me, the appellant has not sought to adduce any further evidence in support of his challenge to the fairness of the adjournment. There has been no letter from the GP saying the appellant was unfit to attend the hearing on 28 July. There has been no letter from his parents saying they would have attended. It is fair to say the appellant's parents were in attendance at the hearing before me today, but my concern here is about the appellant's failure, in response to clear Tribunal directions to adduce any further evidence casting light on the situation at the date fixed for the First-tier Tribunal hearing.
11. Fifth (as noted earlier) despite lodging appeal based on dissatisfaction with the respondent's refusal of his claim based on his dependency on parents and ties with a European girlfriend, he had not produced any evidence in support of either those claims.
12. I take into account that the appellant had no legal representative at the time but he has known since refusal of his application for leave to remain that he was facing removal from the UK as he had no other lawful basis for stay. His ability to lodge an appeal demonstrates that he was aware of the elementary fact that his very stay in the UK rested on the outcome of his appeal. Yet he sat on his hands and when he did request an adjournment, sat on them again, even though he said he received no further information until September when he was sent the judge's decision dismissing his appeal.

13. In such circumstances I do not consider that the First-tier Tribunal decision to proceed to deal with his case on the papers discloses any procedural unfairness or denial of a right to a fair hearing. He failed to take the opportunity afforded to him to attend the hearing and failed to show that there was a valid reason for there being no one in attendance at his hearing.
14. The grounds do not seek to challenge the judge's findings in relation to Article 8. It is pertinent to observe what the judge found at paragraphs 16-22.

"16. The circumstances narrated by the appellant would not allow him to apply for further leave to remain as an adult dependent relative in accordance with the Immigration Rules. It is detailed that he is living with his parents and is supported financially by them. The appellant has not provided any further information of his relationship with his European girlfriend and it is noted that he is not living with his girlfriend but is living with his parents.

17. The appellant came to the UK in December 2009. At that time he was aged 27 and it is accordingly considered reasonable to assume that he had been living in Pakistan. Whilst he has detailed that he has no other family members and has lost contact with friends in Pakistan, he is an adult who lived independently in Pakistan until 2009 and it is considered reasonable to assume that there would be no significant obstacles to him being able to reintegrate into his home country.
18. It is clearly the preference of the appellant to remain in the UK where his parents are resident and where he has established a relationship with his girlfriend. Whilst the appellant is living with his parents who are supporting him financially, if the appellant returns to his home country he will be able to continue to have contact with his family and it is assumed that, if necessary, his family would be able to financially support him out with the UK.
19. Whilst the appellant has given some detail of his relationship with his girlfriend, there is no information to suggest that this relationship could not continue outside the UK. Given the nature of the leave which had been granted, the appellant can have no reasonable expectation to stay long-term in the UK.
20. Whilst it was clear that it is the appellant's preference to remain in the UK, I did not consider that the evidence and information provided was persuasive to support consideration of the case on the basis of the appellant's family or personal circumstances.

21. As detailed, the burden of proof lies with the appellant and I was not satisfied on the information presented that there was anything exceptional or compelling in this claim.
22. I did not find that there was anything exceptional or compelling in this claim or that refusal would result in unjustifiably harsh consequences for the individual such that refusal of the application would not be proportionate and accordingly did not consider that there were good arguable grounds for considering the claim outwith the Rules. In reaching this decision I have given consideration to the cases of **Nagre [2013] EWHC 720** and **Singh and Khalid [2015] EWCA Civ 74.**"
15. I see no realistic prospect of any different conclusion being reached by another judge faced with the nugatory evidence which the appellant chose to place before the Secretary of State in relation to his Article 8 circumstances.
- 16 For the above reasons
17. The First-tier Tribunal decision is not vitiated by legal error and its decision to dismiss the appellant's appeal is upheld.

No anonymity direction is made.

Signed

Date: 12 July 2016



Dr H H Storey  
Judge of the Upper Tribunal