



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/02901/2015

THE IMMIGRATION ACTS

Heard at Field House
On 19 February 2016

Decision and Reasons Promulgated
On 8 April 2016

Before

UPPER TRIBUNAL JUDGE STOREY

Between

MR USMAN HAFEEZ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Khan, Counsel, instructed by Lincolns Solicitors
For the Respondent: Mr P Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan. He brings a challenge to a determination of First-tier Tribunal (FtT) Judge Hussain sent on 30 July 2015 dismissing his appeal against a decision made by the respondent dated 7 January 2015 refusing the appellant an extension of his leave to remain. The hearing before Judge Hussain took place on 1 July 2015. The

appeal was dismissed both under the Immigration Rules and outside the Rules on Article 8 grounds.

2. The appellant's ground was that there had been procedural unfairness in that the judge had refused to adjourn the case notwithstanding that "the appellant had provided medical certificates from his GP that he had a knee injury and in the circumstances was unable to attend the hearing". It was contended that the judge had refused the adjournment "solely on the reason that the appeal had been pending since March 2015" even though the delay in the listing of the hearing was not his fault as he had lodged notice of appeal to the FtT in time and paid the appeal fee. As a result the adverse findings that the judge had gone on to make concerning the appellant's relationship with an EEA national and his circumstances in Pakistan regarding a "coercion marriage" were said to have been decided without the appellant having been given a proper opportunity to give oral evidence to defend and prove his claim.

3. The respondent's Rule 24 response opposed the appellant's appeal. This notice stated that the judge had correctly considered the application to adjourn in light of the overriding objective set out in the 2014 Tribunal Procedure Rules 2014 and at [6]–[9] had correctly noted that the appellant had been informed of the hearing 4 months previously. It was maintained that the medical evidence submitted merely identified a knee injury precluding the appellant from work. There was a lack of evidence of family life and not only did the appellant not attend the hearing but neither did his partner.

4. At the hearing before me I heard submissions from both the parties amplifying the arguments already identified on both sides. At the end of the hearing I stated that I would reserve my decision.

5. Having carefully considered the matter I am not persuaded that the FtT judge erred in law. The right to a fair hearing is of fundamental importance but it is not an absolute right and it is not inconsistent with this right for a judge to refuse to adjourn if satisfied that the circumstances of a particular case do not justify it, taking into account the overriding objective set out in rule 2 of the 2014 Procedure Rules. Under rule 4 of these Rules the Tribunal has power to adjourn hearing. In Nwaige (adjournment: fairness) [2014] UKUT 00418 (IAC) the Upper Tribunal stated in the head note:

"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? See SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284."

6. In the appellant's case I do not consider it has been shown that there was a deprivation of the affected party's right to a fair hearing for several reasons.

7. First, the explanation for the appellant's absence, as presented by his Counsel under instructions, was that he was unfit to attend the hearing. However, the only medical evidence submitted was a doctor's certificate stating that he was unable to attend work for one week starting from 30 June 2015 due to a knee injury. That note did not identify the appellant as unable to attend a tribunal hearing. Nor did the surrounding circumstances identified by the appellant's counsel at that hearing (that he had had an accident falling down stairs) demonstrate an inability to attend the hearing. The Newham University Hospital NHS emergency medical department attendance summary records that on 29 June the appellant "[p]resented after fall down stairs. Mild tenderness to anterior shin. Full ROM at knee. XR+no obvious fracture. Discharged with analgesia". It is notable that this description assessed no more than a "mild" tenderness to an anterior shin and "analgesia". The "discharge outcome" was "no follow up required and the entry next to "procedures or investigations pending" simply noted XR Knee Right (Ordered: 29 June-2015...). The hearing took place over two days after the fall down the stairs.

8. Second, related to this, the appellant has had many months since the hearing on 1 July 2015 to adduce further evidence to show that the immediate aftermath of his fall down stairs was more serious - e.g. by producing medical evidence of further medical appointments or the results of the procedure/investigation regarding his right knee. This lacuna is made all the more curious by the fact that in his original application for an extension of his leave the appellant had produced evidence at he had been involved in a traffic accident and "was advised by the doctor not to walk for six months". Despite this evidence, being produced to explain why he had not been pursuing studies, it would have been evident to the appellant from the terms of the respondent's refusal decision that this medical evidence had not been considered to demonstrate the inability he claimed.

9. Third, the appellant had lodged ground of appeal taking particular issue with the decision by the respondent not to address the fact that he had entered into a relationship with an EEA national present and settled in the UK. Before the respondent and indeed the FtT judge there was a glaring lack of evidence regarding this claimed relationship and its duration and surrounding circumstances. I would add that despite a rule 15(2A) notice being served on the appellant in advance of the hearing before me warning the appellant of the need to identify any further evidence on which he sought to rely, he had not submitted anything further.

10. It is argued that I should nevertheless find the judge's decision not to adjourn procedurally unfair because the "sole reason" he gave was that the appellant's case had been listed since March, 3 or 4 months earlier. The grounds complain that "[t]he relevance of this for the decision to adjourn based upon a recent injury to the appellant is not easy to see".

11. However, perusal of the judge's determination does not bear out the claim that this was the judge's only reason or that it was meant in the way portrayed in the grounds. What the judge stated at [8] was:

“I considered a request for adjournment but refused it. I explained that my reason for refusal was that this matter has now been ongoing since at least March 2015 when the appellant was served with a notice of hearing. In view of the history of the matter and considering the nature of the application, I did not find it was in the interest of justice that this matter be deferred any further ...”

12. Although the judge did use the word “reason” in the singular, it is clear from the context that his reason was in fact a composite one which related not just to the fact that the hearing had been listed since March but also had to do with the history of the matter and the nature of the application. Further, I do not consider that this paragraph can fairly be read to suggest that the judge was seeking to blame the appellant for the fact that the case had been listed since March. The judge’s only concern regarding this factor was that it meant that justice was being delayed and the decision to adjourn had to be taken against that background.

13. Given the demonstrable dearth of evidence regarding the appellant’s claimed relationship with an EEA national – and also his claim to have been the subject of a coerced marriage in Pakistan - the state of the evidence relating to the Article 8 circumstances of the appellant was simply that he had first come to the UK in September 2006 as a student and had been granted further extensions in that capacity until his leave was curtailed from 3 September until 7 November 2014 in view of his failure to find an alternative education provider within the time given. In the light of the guidance given by the Supreme Court in Patel & Ors v Secretary of State for the Home Department [2013] UKSC 7Patel, the appellant’s educational circumstances were not such as could attract significant weight in the conduct of any Article 8 balancing exercise. As regards his injuries obtained after a traffic incident in September 2014, there was no satisfactory evidence to indicate that these had in fact prevented him finding an alternative educational provider or that his injuries remained serious or that the appellant would not be able in any event to receive any further medical treatment necessary on return to Pakistan. In short, there was no realistic prospect that the appellant would have been able to succeed in his Article 8 claim either within or outside the Rules even if he had attended his hearing. He had not identified any particular quality to his length of residence in the UK whilst a student save in respect of his reasons for not finding an educational provider after September 2014.

14. For the above reasons I conclude that the FtT judge did not materially err in law and as a result his decision to dismiss the appellant’s appeal must stand.

Signed

Date

Judge of the Upper Tribunal