



**Upper Tribunal  
Immigration and Asylum Chamber**

**Appeal Number: IA/25233/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On: 18 December 2015**

**Date Sent  
On: 5 January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE KAMARA**

**BETWEEN**

**MR MEHMET OZGEN**  
(ANONYMITY DIRECTION NOT MADE)

**Appellant**

**And**

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

**Respondent**

**Representation:**

For the Appellant: In person

For the Respondent: Mr N Bramble, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision, promulgated on 20 March 2015, of First-tier Tribunal Judge AW Khan (hereinafter referred to as the FTTJ). Permission to appeal was granted by Deputy Upper Tribunal Judge McGinty on 15 September 2015.
2. On 5 September 2012, the appellant was granted limited leave to remain in the United Kingdom until 5 September 2013 as a self-employed businessperson under the Turkish European Community Association Agreement. On 5 September 2013, the appellant applied for further leave to remain in order to continue operating his

business.

3. According to the reasons for refusal letter dated 5 March 2014, the Secretary of State did not accept that the appellant had genuinely established himself in business, essentially owing to a lack of supporting evidence to show that he had leased the Turkish Tea House from the registered owners. Furthermore, the respondent did not accept that the appellant's share of the profits were sufficient to support him. Reference was made to the appellant's failure to provide evidence that he was legally obliged to pay rent; his failure declare outgoings for bills or items of his personal expenditure.
4. At the hearing before the FTTJ, an adjournment was sought because counsel for the appellant withdrew representation shortly before the hearing and he requested that the hearing be adjourned in order to obtain alternative legal representation. The FTTJ declined to adjourn the appeal as there "was no valid reason" to do so as the issues were simple, a bundle of documentary evidence had been supplied and the appellant could state his case through the interpreter. The appellant was said to have confirmed that he was willing to proceed with the appeal and gave evidence on his own behalf. The FTTJ dismissed the appeal on the basis that the appellant was not genuinely established in business, finding that he had made a "contrived attempt" to show that he was genuinely operating a business. Reference was made to evidence provided showing that a business known as the Clay Oven was operating from 43-45 Seaside Road rather than the appellant's claimed business.
5. The initial grounds of application to the First-tier Tribunal focused on the refusal to adjourn the hearing. It was said that the appellant had been surprised at the withdrawal of his representative and asked for an adjournment to be on an equal footing to the respondent.
6. FTTJ Homes refused the application noting that the issues in dispute were factual; the appellant's solicitors remained on the record but there was no suggestion that they proposed to attend later in the day and the FTTJ was entitled to infer that counsel would have spoken to the solicitors before withdrawing her services. The decision to withdraw was said to be one that was well within the range of reasonable responses to the situation the FTTJ was presented with. The appellant had agreed to proceed after the process had been explained to him and the decision was said to contain nothing to suggest any unfairness in the process adopted. The grounds identified nothing that is said to have rendered the process unfair.
7. The renewed grounds argued that the appellant was not given an informed choice but was "forced" to continue the hearing. The point was made that the appellant may be represented under Rule 10(1) of the First-tier Tribunal procedure rules and he considered that his right to a fair trial was taken away from him.
8. Permission to appeal was granted on the basis that it was arguably

procedurally unfair to *“effectively force the appellant to proceed completely unrepresented in the circumstances.”*

9. The respondent filed a Rule 24 response on 23 September 2015. Essentially, the respondent opposed the appeal; considered that the FTTJ directed himself appropriately and relied upon FTTJ Homes’ refusal to grant permission.
10. At the hearing before me, the appellant represented himself. There was a slight delay while the respondent’s Rule 24 response was read to the appellant in Turkish by the interpreter and while Mr Bramble read the appellant’s witness statement which was prepared for the hearing before me.
11. I asked the appellant to explain how the FTTJ’s decision to proceed with the hearing of his appeal without him being represented affected his case. The appellant told me that he and his counsel disagreed as to how much money the appellant was to pay counsel for representing him at the hearing and this resulted in counsel refusing to represent him. The appellant told me that he asked the FTTJ to adjourn his appeal to another date but that the judge had insisted on proceeding “as it was a 5-minute case.” The appellant felt under pressure and stressed and his concentration level very bad, although the judge had told him he would be fair. In reading the FTTJ’s decision now, the appellant had noticed that one document, at page 44 of the appellant’s bundle, had been ignored. That document related to what the FTTJ said about there being no evidence that the owner of the business premises where the appellant’s business was said to be located, requiring the consent of the lender to sublet to the appellant. I asked the appellant if there were any other reasons why he believed that going ahead without a representative meant that he did not have a fair hearing and he told me there were not. In addition, the appellant explained that he was not represented before the Upper Tribunal because he believed that he was not allowed to run his business owing to the Home Office decision and as a result he was in financial difficulty in terms of finding a representative.
12. Mr Bramble relied upon the Rule 24 response and argued that the FTTJ had not fallen into procedural error in failing to adjourn the appeal. He asked me to note that the appellant had indicated his agreement in proceeding without a representative at the time but the contrary was said to be the position today. I was also asked to take into consideration the reason given by the appellant for not being represented before me and to find that these circumstances would have applied had his appeal been adjourned at the First-tier.
13. In response, the appellant denied that he carried on with his hearing willingly. He had asked the FTTJ to adjourn his case for another date. If the appeal had adjourned, he intended to supply documents missing from his file and his case would be presented properly to the judge.

Decision on error of law

14. At the end of the hearing, I announced that the FTTJ made no material error of law and upheld his decision in its entirety for the following reasons.
15. I have had regard to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 regarding the power the First-tier Tribunal has to adjourn or postpone a hearing under its case management powers. Regard should have been had to the overriding objective set out in Rule 2 requiring the Tribunal to deal with cases fairly and justly.
16. I have also considered Rule 10(1), which was relied upon by the appellant in his witness statement, which states as follows;  
    ‘(1) A party may be represented by any person not prohibited from representing by section 84 the 1999 Act.’
17. The key word is “may.” Contrary to the appellant’s argument, this provision does not entitle a party to be represented at each and every hearing of their appeal.
18. I have also had regard to the decision in Nwaigwe (Adjournment: Fairness) [2014] UKUT 00418 (IAC). The crucial question being whether the refusal of an adjournment deprived the affected party of a right to a fair hearing. I have also taken into consideration the Presidential Guidance note no. 1 of 2014 and note that factors weighing in favour of adjourning an appeal, even at a late stage, include whether further time is needed because of a delay in obtaining evidence which is outside the party's control, for example, where an expert witness fails to provide a report within the period expected. That is to be balanced by factors weighing against the grant of an adjournment, namely that the application was not made at the earliest opportunity or is speculative or that it does not show that anything material would be achieved by the delay.
19. In SH (Afghanistan) v SSHD [2011] EWCA Civ 1284 at [13], it was held that when considering whether an adjournment should have been granted, the test was not irrationality or whether the decision was properly open to the FTTJ; the sole test was whether it was unfair. As stated in Nwaigwe, supra, in practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. I find that the appellant has not been so deprived.
20. At [4] of the FTTJ’s decision, he sets out the circumstances surrounding the adjournment application clearly and in detail. He notes that notwithstanding the withdrawal of counsel, the appellant remained represented by VC Legal (UK). The FTTJ was correct in noting that the matters in issue before him were simple. Those issues were whether the appellant was genuinely established in business and whether the profits from that business were sufficient to support him. The FTTJ addressed the competing factors and noted the 9-

month delay in the appeal coming to a hearing. He had an extensive bundle of documents before him from the appellant and rightly considered that the appellant, as the claimed businessperson, would be able to state his case without injustice being done.

21. I particularly take note of the fact that the appellant indicated to the FTTJ his willingness to proceed with the appeal, also at [4] of the decision. I have no reason to doubt the FTTJ's record of the appellant's response to this issue.
22. Clearly, the appellant is no longer happy that his appeal proceeded in the absence of a representative, however I consider that this is solely because he was unhappy with the FTTJ's comprehensive findings, which did not go in his favour.
23. At the hearing before me, the appellant could only point to one matter, which he said might have been affected by the FTTJ proceeding without the appellant being represented. That related to whether the consent of the bank had been obtained for the premises to be sublet. Contrary to what the appellant told me, the FTTJ, at [5] considered the appellant's oral evidence on this issue and noted the location of the document confirming that this consent had been obtained, at [41] of the appellant's bundle. Therefore, the appellant's objection is without foundation.
24. The FTTJ listed 9 separate reasons for concluding that the appellant was not genuinely established in business. One of those reasons, at [13(f)] is particularly informative and arose from the FTTJ being shown a photograph of the address from where the appellant's claimed business (called the Turkish Teahouse) was said to be operating. The FTTJ remarked; "*What the appellant has not explained is why a business known as the Clay Oven is operating from 43-45 Seaside Road.*" Also at 13(g) the FTTJ comments adversely on the appellant's failure to provide any satisfactory explanation why he did not comply with a request from the Home Office to supply further details that he was running a genuine business.
25. In the circumstances set out above, I conclude that the FTTJ was right to proceed with the hearing in the absence of the appellant's representative and that a further delay would not have made a material difference to the process or outcome of the appellant's appeal. That the appellant remains unrepresented today only emphasises the correctness of the FTTJ's approach.
26. No anonymity direction was made by the FTTJ and I can see no reason to make any such direction now.

### **Conclusions**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I uphold the decision of the First-tier Tribunal.

Signed:

Date: 20 December 2015

Deputy Upper Tribunal Judge Kamara