



IAC-BH-PMP-V1

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

Appeal Number: IA/32867/2014

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 1st December 2015**

**Decision and Reasons Promulgated
On 29th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

**SHAHID MAHMOOD TABBASUM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L J Doyle, Solicitor of M & K Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. On 18th September 2015 Judge of the First-tier Tribunal Page gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal Bell who dismissed the appeal against the respondent's decision taken on 1st August 2014 to refuse leave to remain as a partner in accordance with the provisions of Appendix FM and paragraph 276ADE of the Immigration Rules.
2. Permission was granted because it was said to be arguable that, as the appellant was unrepresented at the First-tier hearing, the judge was wrong to refuse an application to adjourn. The appellant was therefore deprived of a fair hearing.

3. The grounds of application explained that the appellant had previously been represented by Buckingham Legal Associates and that firm had been due to represent him at the hearing in the First-tier Tribunal on 9th June 2015. However, on the preceding Friday, the appellant had received a telephone call to indicate that Buckingham Legal Associates would not represent him and he was then unable to find alternative representation in the time available. The grounds also comment that there is no record in the decision of the judge dealing with the application or the reasons for the refusal. It was claimed that the refusal was unfair and unreasonable having regard to the decision of the Upper Tribunal in *Nwaigwe (Adjournment: fairness)* [2014] UKUT 00418 (IAC). It was also argued that the error was material to the outcome of the appeal as the appellant's representatives had been responsible for omissions in his application to the respondent which, I infer, would have been rectified if the representatives had been present at the hearing.
4. At the commencement of the hearing before me I indicated to representatives that I had read the judge's Record of Proceedings and noted that it contained an indication that the judge had dealt with an adjournment application although, as the grounds alleged, any reference to the application had been omitted from the decision.
5. Mr Doyle emphasised that the appellant had needed professional representation to put his claims for human rights protection outside the Rules and, particularly, in relation to paragraph 276ADE of the Rules relating to the existence or otherwise of obstacles to the appellant's return to Pakistan. He confirmed that the appellant had lodged a complaint against his past representatives. In that respect I was shown a copy of a letter dated 10th August 2015 to the Office of the Immigration Services Commissioner and an e-mail acknowledgment of that complaint on 24th November 2015. Mr Doyle also indicated that evidence of compelling circumstances could have been put before the First-tier Tribunal if there had been proper representation. This would have included information about the appellant's partner's serious illness and arrangements for the care of her children.
6. Mr McVeety argued that the grounds did not show procedural unfairness. He emphasised that, in relation to the deception which had been alleged in the refusal decision, the appellant had taken responsibility for that. He also questioned what would be relevant for consideration outside the Rules. In that respect he pointed out that the judge had given consideration to the appellant's partner's medical condition and (paragraphs 43 and 44) the relationship with the partner's children. He contended that there was nothing unfair about the decision despite the refusal to adjourn.
7. Mr Doyle completed his submissions by emphasising that the appellant had the right to representation on the day. As to the alleged deceit he thought that the decision had not clearly shown that the judge adopted the right approach taking into account the evidential burden upon the respondent.

Conclusions

8. The decision by the experienced judge is comprehensive and cogently argued. However, no reference is made to the adjournment application or the reasons for it. Whilst the Record of Proceedings of the judge shows that there was such an application it was incumbent upon her to refer to this and give adequate reasons for

refusing the application. This was not a case where the circumstances of the application were such that the refusal of an adjournment was inevitable. The appellant had been informed only two working days before the hearing that his representatives would no longer assist him in circumstances where he wanted them to put comprehensive information before the court about Article 8 issues affecting his family life with his partner and her children. There is nothing before me to suggest that representatives had given early warning to the appellant of any reasons for ceasing to act. Thus the appellant appears to have been left with no choice but to make an adjournment application.

9. In *Nwaigwe* the President of the Tribunal indicated that a refusal to accede to an adjournment request could, in principle, be erroneous in law in several respects including a failure to take into account all material considerations and denying the party concerned a fair hearing. The test to be applied was that of fairness on the basis that there may have been a deprivation of the affected parties' right to a fair hearing. Applying that guidance to the circumstances of the adjournment in this case it is clear that the judge erred in law in two respects. First, in not setting out the details of the adjournment application that was made and reasons for refusing it and, second, that, in all the circumstances, it was in the interests of justice for an adjournment to have been granted.
10. As the errors were fundamental to the fair hearing of the appeal it is necessary for the matter to be remitted to the First-tier Tribunal for hearing afresh. My conclusion in that respect follows the specific proviso set out in paragraph 7.2(c) of the Practice Statement for the Tribunal issued by the Senior President of Tribunals on 25 September 2012.

Anonymity

Anonymity was not requested in the Upper Tribunal nor had a direction been given in the First-tier Tribunal. I, therefore, make no direction as to anonymity.

DIRECTIONS

11. The decision of the First-tier Tribunal shows a material error on a point of law. The matter is remitted to the First-tier Tribunal for hearing afresh.
12. The appeal will be re-heard at the Stoke Hearing Centre on a date to be specified by the Resident Judge.
13. An Urdu interpreter will be required for the hearing which is estimated to last two hours.

Signed

Date

Deputy Upper Tribunal Judge Garratt