



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

Appeal Number: PA/02593/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 15 September 2017**

**Decision & Reasons Promulgated
On 2 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

**USHA RAJU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss M Malhotra, of Counsel, instructed by Kulendran
Immigration Law Chambers

For the Respondent: Mr S Staunton, Home Office Presenting Officer

DECISION ON ERROR OF LAW

Anonymity

1. The First-tier Tribunal did not make an anonymity order. I have not been invited to order anonymity. I see no reason to do so, so none is made.

Background

2. This is an appeal from a decision of First-tier Tribunal Judge S Turquet (hereafter “the Judge”) promulgated on 4 May 2017, whereby she dismissed the Appellant’s appeal against the decision of the Secretary of State to refuse to recognise her as a refugee, or as a person otherwise requiring international protection.
3. The Appellant is a citizen of India, born on 21 March 1968. I do not propose to rehearse her immigration history or the substance of her asylum claim bearing in mind that the substantive nature of the challenge before the Upper Tribunal is essentially one of procedural fairness. While there are other grounds of challenge, it is accepted that if the fairness ground succeeds, then all that follows in the Judge’s Decision must be flawed.
4. The Appellant’s appeal was listed for hearing before the Judge on 12 April 2017. Prior to the hearing namely on 10 April 2017, the Appellant’s representative applied for an adjournment to obtain medico-legal evidence. The application was refused by the First-tier Tribunal on 11 April 2017, essentially on the grounds that there had been sufficient time to obtain such evidence and the appeal could otherwise be justly determined. Before the Judge the Appellant was represented by Ms Miskiel of Counsel. Ms Miskiel renewed the application to adjourn. The fact that she did so is supported by a witness statement from Ms Miskiel and her instructing solicitor (Mr Kulendran) who was also present at the hearing. Ms Miskiel’s witness statement deposes evidence to the effect that the Judge refused the application for the same reasons given by the Tribunal on 11 April 2017.
5. The Judge, as is apparent from the foregoing, proceeded and in due course dismissed the appeal for reasons set out in her Decision. Essentially, the Judge was not satisfied that the Appellant had *“provided a credible basis for challenging the assertions, analyses and conclusions in the Respondent’s refusal letter.”*
6. The Respondent’s representative before the First-tier Tribunal noted a minute on the file that Mr Staunton has been able to provide details to the Tribunal today. It records that an adjournment application was made to the Judge and refused. In the circumstances Mr Staunton withdrew the Respondent’s rule 24 response and conceded that the Decision was infected by a procedural unfairness and could not stand. I consider he was right to do so.
7. It is a troubling feature of this case that the Judge’s Decision is entirely silent on any of these circumstances.
8. The applicable law in respect of adjournments is helpfully explored in the decision of **Nwagwe (adjournment - fairness) [2014] UKUT 00418 (IAC)**. I have considered what is set out at paragraphs [7]-[9]:

- “7. 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? Any temptation to review the conduct and decision of the FtT through the lens of reasonableness must be firmly resisted, in order to avoid a misdirection in law. In a nutshell, fairness is the supreme criterion.
8. The cardinal rule rehearsed above is expressed in uncompromising language in the decision of the Court of Appeal in SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284, at [13]:

‘First, when considering whether the immigration Judge ought to have granted an adjournment, the test was not irrationality. The test was not whether his decision was properly open to him or was *Wednesbury* unreasonable or perverse. The test and sole test was whether it was unfair’.

Alertness to this test by Tribunals at both tiers will serve to prevent judicial error. Regrettably, in the real and imperfect world of contemporary litigation, the question of adjourning a case not infrequently arises on the date of hearing, at the doors of the court. I am conscious, of course, that in the typical case the Judge will have invested much time and effort in preparation, is understandably anxious to complete the day’s list of cases for hearing and may well feel frustrated by the (usually) unexpected advent of an adjournment request. Both the FtT and the Upper Tribunal have demanding workloads. Parties and stakeholders have expectations, typically elevated and sometimes unrealistic, relating to the throughput and output of cases in the system. In the present era, the spotlight on the judiciary is more acute than ever before. Moreover, Tribunals must consistently give effect to the overriding objective. Notwithstanding, sensations of frustration and inconvenience, no matter how legitimate, must always yield to the parties’ right to a fair hearing. In determining applications for adjournments, Judges will also be guided by focussing on the overarching criterion enshrined in the overriding objective, which is that of fairness.

9. *In passing, I am conscious that the FtT procedural rules are scheduled to be replaced by a new code which is expected to come into operation on 20 October 2014. The provisions relating to adjournments, previously enshrined in rules 19 and 21 have been substantially simplified. Within the new code, the Asylum and Immigration Tribunal (Procedure) Rules 2014, Rule 4(3)(h), under the rubric 'Case Management Powers', provides that the FtT -*

'may ... adjourn or postpone a hearing'.

This substantially less prescriptive formula reinforces the necessity of giving full effect, in every case, to the common law right and principles discussed above. The overriding objective remains unchanged: see Rule 2. FtT Judges dealing with adjournment issues should continue to apply the principles rehearsed above and the decision of the Court of Appeal in SH (Afghanistan), giving primacy to the criterion of fairness."

9. In my judgement it is apparent that the Judge singularly fails to demonstrate that she gave consideration and/or had regard to the Appellant's common law right to a fair hearing, in circumstances where her Decision does not address any of the events that it is accepted occurred at that hearing. The Judge has not given reasons for her decision to proceed with the hearing and thus has not demonstrated why in her view she considered it fair to proceed. The absence of any consideration of an adjournment or an explanation for the decision to proceed, constitute an error of law, which in this case is compounded by the Judge's adverse findings for want of medical evidence, the very same evidence that formed the subject matter of the request to adjourn.
10. In those circumstances I find the Judge erred in law. The only outcome must be that the decision of First-tier Tribunal Judge Turquet is set aside. The appeal is remitted to the First-tier Tribunal for a rehearing.
11. I make one further observation should this become an issue before the First-tier Tribunal. At the hearing, the original divorce certificate on file was returned to Ms Malhotra at her request (there is a legible copy contained in the Appellant's bundle).

Decision

The decision of the First-tier Tribunal contains material errors of law, such that it shall be set aside.

The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Turquet with all issues at large.

Signed

Date

27 October 2017

Deputy Upper Tribunal Judge Bagral