



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

Appeal Number: PA/03094/2016

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**Decision &  
Promulgated**

**Reasons**

**On 13 July 2017**

**On 20 July 2017**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

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

**and**

Appellant

**JEET SINGH ARORA  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr McVeety, Senior Home Office Presenting Officer

For the Respondent: Mr Williams, instructed by Duncan Lewis & Co, Solicitors

**DECISION AND REASONS**

1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, Jeet Singh Arora, is a male citizen of Afghanistan and appeals against the decision of the respondent dated 17 March 2016 to refuse his claim for protection. The First-tier Tribunal (Judge J Austin) in a

decision promulgated on 2 February 2017, allowed the appeal on asylum grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. There is a single ground of appeal. This concerns the decision of the First-tier Tribunal judge, following an application by the Secretary of State, not to adjourn the hearing. The Secretary of State submits that the refusal to adjourn the hearing was unfair (*Ngwaigwe (Adjournment: fairness)* [2014] UKUT 00418) claiming that she had been denied the opportunity to make submissions and to cross-examine witnesses. Granting permission, Judge E B Grant wrote:

If there had been an application on behalf of an appellant before the First-tier Tribunal that because his representative was sick and unable to represent him he wished to have an adjournment, it is most unlikely to have been refused. In the normal course one would expect the same courtesy to be afforded to both sides. It is arguable fairness to both parties required the appeal hearing to be adjourned. However, had the First-tier Tribunal Judge considered the respondent's case in detail and made findings thereon I might have refused this grant of permission but there was no indication in the decision that the respondent's case was taken into account at all.

3. Both parties and the Upper Tribunal were hampered at the initial hearing in Manchester on 13 July 2017 by the fact that the letter from the Presenting Officers' Unit (POU) seeking an adjournment and to which the judge refers at [2] and dated 8 December 2016 was not available. Mr McVeety, for the Secretary of State, checked on the Home Office database but could not find a copy of the letter and, during a brief adjournment, he spoke with a colleague who had written the letter who was unable to assist. Judge Austin simply records that the letter indicated that "due to staff shortages there would be no Presenting Officer available for the hearing and asking the Tribunal for an adjournment of this appeal and the other appeals in the list". Judge Austin does say that the reason for the adjournment was that staff shortages have been caused due to sickness. From the decision of the judge it appears that the medical condition of no specified member of staff had been referred to in the letter; it seems that the POU had been put into difficulties by reason of staff sickness generally.
4. Judge Austin refused the adjournment and, at the end of his decision, set out the relevant Rule (paragraph 4(3)(h) of the 2014 Procedure Rules) and gave detailed reasons. He also summarised the authority of *Ngwaigwe* and then at [31] wrote this:

In considering whether to adjourn this matter I had regard to the following matters:

- (a) The respondent had issued a refusal letter setting out his (sic) views.
- (b) The respondent had been given notice of the hearing date on 8 December 2016 and had made an operational decision not to attend the hearing.

- (c) Other than indicating in the letter dated 8 December 2016 that there was staff sickness, the respondent had provided no explanation as what steps had been taken to instruct an advocate to attend on his behalf, or to explain why it was that listing court 3 at Manchester had been chosen as one which would not have an advocate present.
5. Having heard the oral submissions of Mr Williams, for the appellant, and Mr McVeety, I reserved my decision.
  6. First, I observe that there is no principle either in the Procedure Rules or relevant jurisprudence to the effect that a Tribunal must adjourn a hearing if a representative of either party is taken ill on the day of the hearing. However, such a principle appears to lie behind Judge Grant's observations (see above) and also the Secretary of State's grounds of appeal. The Secretary of State appears to take the view that, if an appellant's representative was taken ill on the morning of a hearing, an adjournment would be inevitable and that the same principle should apply to the respondent's representatives. The fact remains, there is no such principle; all adjournment applications are to be considered, as this one was considered, subject to the Procedure Rules and the relevant jurisprudence in this case, *Ngwaigwe*.
  7. Secondly, I find that Judge Grant has misread the decision of the judge given that she observes that "there is no indication in the decision that the respondent's case was taken into account at all". That comment is not consistent with my reading of the decision. Judge Austin at [21] noted that, "although there was no-one present on behalf of the respondent I was asked to consider the reasons for refusal letter dated 17 March 2016 and I did so". It was not entirely clear by whom the judge was asked to consider the reasons for refusal letter but I assume that he had been asked to do so in the now missing letter from the POU. The judge goes on in the remainder of [21] to summarise the respondent's case. Moreover, at [26], the judge wrote, "I heard from the appellant and he addressed issues taken with him by the respondent as to his account of experiences of living in Afghanistan ...". I am satisfied that the judge has properly considered the respondent's reasons for refusing protection when determining the appeal.
  8. Thirdly, I agree with Mr Williams, for the appellant, that it is significant that the grounds of appeal make no mention at all of the basis upon which the judge has allowed the appeal. The grounds solely concern the refusal to adjourn; the judge's findings of fact are not challenged. I accept that the respondent did not cross-examine the appellant or the witnesses but I do find it is significant that, having set out her case in the refusal letter, the judge's rejection of that case on its merits has not been challenged at all by the Secretary of State.
  9. Fourthly, I consider that it is significant that the application made for the adjournment referred to staff shortages rather than the sickness of a particular Presenting Officer to whom this case had been allocated. I am

aware that the Secretary of State is frequently unable to provide Presenting Officers for every court in the First-tier Tribunal as a result of a variety of administrative difficulties. I have no doubt that such shortages are often caused by staff sickness. First-tier Tribunal Judges are very familiar with determining appeals in courts where there is no representation for the Secretary of State; indeed, this is such a common occurrence that it has been addressed on more than one occasion in the jurisprudence of the Upper Tribunal and its predecessors (see for example, the familiar *Surendran* guidelines). It is a matter entirely for the POU how it distributes such resources as it has on any given day between the various appeals to be heard. However, it is difficult to see why shortages in resources to which staff sickness may have contributed should be treated any differently than shortages caused by other reasons. Ultimately, the POU chose not to employ such resources as it had that day in Judge Austin's court. I consider that to be a different scenario from one where an advocate who has been instructed to attend cannot reach the court on the day of the hearing on account of sickness. Moreover, the grounds of the Secretary of State in this appeal come close to suggesting that when the POU indicates to the court that it cannot provide a Presenting Officer because of general staff sickness then the judge has no option but to adjourn the hearings listed before him or her. That observation, in turn, brings me back to my first point, namely that there is nothing in the Procedure Rules or in the jurisprudence which requires the Tribunal to adjourn a hearing because an advocate is unavailable due to sickness. I find that Judge Austin considered the adjournment application according to the correct Procedure Rules and jurisprudence and that he reached the decision which was fair in all the circumstances. Moreover, he properly considered the respondent's reasons for refusing protection and ensured that the appellant, when he gave oral evidence, addressed the reasons for the refusal of his claim. I find that the judge did not err in law and I dismiss the appeal.

### **Notice of Decision**

10. This appeal is dismissed.
11. No anonymity direction is made.

Signed

Date 19 July 2017

Upper Tribunal Judge Clive Lane

