



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/05533/2017**

Appeal Numbers:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 2 May 2018

**Promulgated
On 9 May 2018**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

US

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs A Basharat, Counsel instructed by Howe & Company Solicitors

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

DECISION AND REASONS

1. The appellant is a citizen of Pakistan. His date of birth is 12 August 1986. He appealed against the decision of the respondent on 23 May 2017 to refuse to grant him asylum. His appeal was dismissed by First-tier Tribunal Judge I Ross on 5 January 2018.
2. Permission was granted to appeal against the decision of Judge Ross by First-tier Tribunal Judge Osborne on 13 February 2018.

The Grounds of Appeal

3. The grounds assert that there has been procedural unfairness. It is argued that the judge unfairly refused to adjourn the case. There was evidence before the judge that the appellant had been prescribed medication on 4 January 2018, one day before the hearing. The judge was informed by the representative that the appellant was in hospital on the day of the hearing. It was unreasonable for the judge to ask whether there was any evidence that the appellant was at the hospital because it was unlikely to be available at the hearing.
4. In support of this application the appellant relies on a text message of 5 January 2018 as evidence of his attendance at the hospital. The case of *Nwaigwe* [2014] UKUT 418 is relied on.
5. There is no challenge to the substantive decision.

The Decision of the Judge

6. At the hearing the appellant's representative, Mr Ilahi, applied for an adjournment. The judge set this out at [4]. In support of the application he relied on a letter from the appellant's then solicitors of 4 January 2018. Attached to this was a cover of an imaging Plain X- ray of 12 December 2017 which as recorded by the judge gave a history of "chesty cough, tachycardic." The judge observed that there was no other information. The judge asked Mr Ilahi to take instructions about the possibility of the hearing being put back to later in the day. Having sought instructions, Mr Ilahi maintained the application informing the judge that the appellant was in hospital. In support of this he relied on a second letter from the solicitors of 4 January 2018. The judge noted that this stated that the appellant was unable to attend court due to ill health and attached a copy of a prescription. Mr Ilahi was asked by the judge whether the appellant was in A&E or whether he had been admitted, but he was not able to give any information other than that he was in hospital.
7. The judge considered the limited documentation before him and concluded that the appellant had asthma and that he had been prescribed antibiotics and an anti-inflammatory drug. The judge concluded that there was no evidence that he had been admitted to hospital or waiting in an A & E department. There was, according to the judge (see [7]), no evidence that the appellant was unable to attend the hearing. The judge considered that the matter had been previously adjourned at the appellant's request for him to obtain specific evidence; however, he had failed to comply with directions in respect of this evidence and he had not provided a bundle. The judge refused the adjournment.

Conclusions

8. I heard submissions from both parties. Ms Basharat showed me the text that the appellant received on 5 January 2018 confirming that he had attended hospital. She told me that the appellant is asthmatic.
9. The author of first received letter of 4 January 2018 from the appellant's solicitor's stated that the appellant was "presently very ill" and purported to enclose a medical report. There was no medical report. What is attached is a document entitled "Imaging Plain Film X-Ray" referred to by the judge. It established, at most, with a degree of speculation, that in December 2017 the appellant was x-rayed and had symptoms as noted by the judge. The author of the second letter from the solicitors received that same day asserted that the appellant was very ill and purported to attach supporting evidence from Whittington hospital. This established at the most that the appellant was prescribed medication as set out by the judge on 4 January 2018.
10. The evidence before the judge did not establish that the appellant was unfit to attend court on 5 January 2018. It did not establish that he was in hospital on that day. The letters from the solicitors are vague in the extreme. The judge was entitled to expect better evidence. In any event, the appellant has had time to present better evidence, but has failed to do so. The evidence now produced is a text message. This does not establish that the appellant was unable to attend the hearing because he was in hospital on 5 January at the time of the hearing or as a result of ill-health. It establishes that he attended hospital at an unspecified time (may be 4 January) when he was prescribed medication. The evidence is woefully lacking.
11. The evidence before the judge and that now before me does not establish that the appellant was unfit to attend court or otherwise participate in the proceedings. There is no evidence explaining the failure to comply with the directions or why his representative was not able to represent him in respect of the substantive matter. There is no procedural unfairness arising from the judge's decision to proceed in the appellant's absence.
12. There is no error of law. The decision of the judge to dismiss the appeal is maintained.

Signed Joanna McWilliam

Date 2 May 2018

Upper Tribunal Judge McWilliam