



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

Appeal Number: HU/07789/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 4th December 2018**

**Decision & Reasons
Promulgated
On 29th January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**SHAKIL [C]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Khan, Counsel

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

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh born on 2nd January 1984. On 20th January 2007 the Appellant made an application for indefinite leave to remain in the United Kingdom outside the Immigration Rules on the basis of his private and family life in the UK. That application was refused by Notice of Refusal dated 28th June 2017.
2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Pears sitting at Hatton Cross on 7th June 2018. The appeal was

dealt with on the papers, and in a decision and reasons promulgated on 20th June 2018 the Appellant's appeal was dismissed.

3. Grounds of Appeal were lodged to the Upper Tribunal on 3rd July 2018. On 24th October 2018 Judge of the First-tier Tribunal Page granted permission to appeal on what are recited as Grounds 3 and 4 only. Those grounds contend that the First-tier Tribunal Judge proceeded with the appeal in the absence of the Appellant or any representative and notwithstanding an application to adjourn on medical grounds and it was contended that there had been procedural unfairness. All other grounds represent an expression of disagreement with the findings that appear to have been open to the judge to reach on the papers before him.
4. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Mr Khan. The Secretary of State appears by her Home Office Presenting Officer, Mr Bramble.

Documentation

5. There is before me a bundle of documents produced by the Appellant's instructed solicitors relating to the Appellant's medical condition. Considering the submission that there has been a procedural unfairness to the Appellant in proceeding when he was unable to attend due to ill health I considered it appropriate, and it was not challenged by Mr Bramble, to give due consideration to that documentation. It is of some relevance. It consists of correspondence from the Appellant's GP and appointments relating to the Appellant's treatment at hospital. From it, it seems clear that the Appellant is suffering from chronic hepatitis B and that he has been and continues to remain to be unfortunately unwell, and is being medically treated for this condition.

Submissions/Discussion

6. In submission Mr Khan, whilst noting that the grounds before me are limited, points out that the judge failed to make due consideration in any event to the Appellant's circumstances in Bangladesh, in particular that his mother had now passed away, that his parents had divorced when he was 5, and that he has no social ties in Bangladesh. He submits that the judge has failed to make findings with regard to the Appellant's ability to reintegrate into Bangladesh society, and that the Appellant would suffer very significant obstacles on return, in particular with regard to the difficulty he would have in obtaining medication for his hepatitis B.
7. Mr Bramble acknowledges that the letter from Dr Jason John from the King Edward's Medical Group does give some information. However, he considers that the judge has dealt with the issue of very significant obstacles at paragraph 13 of his decision. He reminds me the threshold is a high one and consequently the ability of the Appellant to get over that is

material. He submits it is very unlikely that a judge would find differently to the finding of Judge Pears and that the judge has already given some consideration to the Appellant's medical condition.

The Law

8. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
9. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

10. In granting permission to appeal Judge Page limited the grounds to those of procedural unfairness that might have arisen as a result of the failure to grant an adjournment, albeit that the judge had noted that the Appellant was suffering from his current condition for some time. I accept that there has been procedural unfairness insofar as the judge did fail to direct himself or consider the documents provided which showed that on 6th June the Appellant attended both Accident and Emergency and his GP and had been prescribed medication which (in accepting the submission made by Mr Khan) was indicative of a worsening of his condition on the day before the hearing. Whilst clearly such documents could not have been before the Tribunal at the hearing of the appeal, the subsequent documents provided by the Appellant's medical practitioners confirm this position. I therefore consequently accept that this was an Appellant who had genuine reasons for not attending the hearing.
11. On that basis, and on that basis alone, I accept that the Appellant may well not have had a fair hearing. Whilst Judge Pears has made findings of fact, it may well be that had the Appellant been present and able to

answer questions it might have influenced the judge's decision. Consequently to that extent, I am prepared to set aside the decision of the First-tier Tribunal with none of the findings of fact to stand and to remit the matter back to the First-tier for rehearing. However, I emphasise that the basis for doing this is purely because the Appellant is entitled to have effectively his "day in court". On the basis of the evidence that has so far been before the Tribunal the Appellant is warned that there appears to be scant evidence to show that the judge will come to a different conclusion to that of Judge Pears.

Notice of Decision

The decision of the First-tier Tribunal disclosed a material error of law solely to the extent that there was procedural unfairness to the Appellant in not being granted an adjournment and the decision of the First-tier Tribunal Judge is set aside. Directions are given hereinafter for the rehearing of this matter.

- (1) On finding that there is an error of law in the decision of the First-tier Tribunal Judge the decision is set aside and the matter is remitted back to the First-tier Tribunal at Hatton Cross for rehearing with an ELH of two hours.
- (2) That the rehearing be heard on the first available date 28 days hence before any Judge of the First-tier Tribunal other than Immigration Judge Pears.
- (3) That none of the findings of fact are to stand.
- (4) That there be leave to either party to file and/or serve a bundle of subjective and/or objective evidence upon which they seek to rely at least seven days prior to the restored hearing.
- (5) That the Appellant do personally attend the hearing for the purpose of cross-examination.
- (6) That in the event the Appellant requires an interpreter it is for his instructed solicitors to notify the Tribunal of the language requirement within seven days of receipt of these directions.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT FEE AWARD

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris