



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

Appeal Number: HU/01193/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 6 January 2020**

**Decision & Reasons Promulgated
On 23 January 2020**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

**MR RAYMOND DERRICK BROOKS
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Murphy, Counsel, instructed by Colindale Law

For the Respondent: Mr P Singh, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

The appellant is a citizen of Jamaica born in 1968. He says that he arrived in the UK in 1997 on a visit visa. In 1999 he was sentenced to four years and six months' imprisonment for possessing a class A drug with intent to supply. In September 1999 he made an application for leave to remain as a spouse but withdrew the application and was removed to Jamaica in November 2000. He claims to have re-entered the UK illegally in November 2001.

On 3 July 2006 he was arrested for illegal entry and detained but subsequently released. In January 2012 he made an application for leave to remain as a

spouse but that application was rejected because no fee was paid and the wrong form was used. In May 2012 a further application of the same type was made but that was rejected for similar reasons. The same happened in October 2012.

A human rights application was made in February 2013 but refused with no right of appeal in May 2013. On 5 June 2015 further evidence was submitted in relation to the human rights claim and on 23 July 2015 he was granted 30 months' leave on the basis of family and private life in the light of the fact that his daughter was under the age of 18 at the date of application.

On 24 January 2018 he made a further application for leave to remain on human rights grounds which was refused in a decision dated 28 December 2018. His appeal against that decision came before First-tier Tribunal Judge Thorne at a hearing on 21 August 2019, resulting in the appeal being dismissed.

The Grounds and Submissions

The grounds of appeal in relation to Judge Thorne's decision contend, in summary, that he was wrong to refuse the appellant's application for an adjournment. The grounds argue that the evidence was that the appellant is illiterate, was destitute and homeless and sought an adjournment in order to obtain legal representation. It is further argued that there should have been real concern on the part of Judge Thorne in relation to the appellant's ability to remember the name of the solicitors that he had visited the day before the hearing.

In addition, the grounds contend that the letter requesting an adjournment, drafted by those solicitors, revealed that the appellant had had insufficient time to prepare for the appeal because he was told on Friday, 16 August 2019 that his hearing was to be held on Tuesday, 21 August 2019.

It is further argued that it was irrational of the judge to conclude that an adjournment was not merited and that given that he had been in the UK for nearly 18 years, with representation he may have succeeded in his appeal. It is further said in the grounds that "reports" might have been obtained which could expand on the issue of the appellant's "cognitive abilities".

In his submissions, Mr Murphy relied on the grounds and referred to various aspects of Judge Thorne's decision. I was also referred to the detail of the letter dated 21 August 2019 requesting an adjournment. Various authorities cited in the grounds were referred to and relied on.

Mr Singh contended that there was no error of law in Judge Thorne's decision refusing to adjourn the hearing. It was submitted that the appellant's contention that he was illiterate was inconsistent with what is recorded at [29] of Judge Thorne's decision in terms of the appellant having said that he had "read" that returnees to Jamaica are being killed.

It was further submitted that it was very unlikely that the appellant would have been able to persuade a firm of solicitors to represent him, given that they

required payment and he did not have funds. That was clear from [21] of the decision.

As to what was said about the appellant's potential memory problems, his inability to remember the name of the solicitors that he had attended the day before the hearing did not establish that he had any particular difficulties. There may be many reasons why someone may say that they do not remember an event, or indeed may not in fact be able to remember.

It was submitted that Judge Thorne assisted the appellant during the course of the hearing by asking him questions, as is clear from [23] and [29], before concluding that an adjournment was not warranted.

Assessment and Conclusions

It is necessary to describe Judge Thorne's decision and the background circumstances in a little more detail in order to explain why I have concluded that his decision must be set aside for error of law.

At [19] Judge Thorne very properly referred to a letter from Jein Solicitors dated 7 March 2019 to the First-tier Tribunal asking for a remission of the fees for the appeal on the basis that the appellant had no money and was homeless. The letter states that the solicitors were representing him on a *pro bono* basis. In fact, that letter reiterates previous requests to the Tribunal made on the same basis. The application for a remission of the appeal fee was eventually granted, notified in a letter dated 23 April 2019 to Jein Solicitors.

The judge's decision records at [21] that the appellant said that he had sacked Jein Solicitors and wanted an adjournment to instruct new representatives. He said that 'yesterday' he had gone to a new firm of solicitors whose name he could not remember and that they had agreed to act on a *pro bono* basis and to draft a letter asking for an adjournment. However, they required to be paid in order to represent him. The appellant's evidence was that he had no money but hoped that if he could get an adjournment he could persuade those "unidentified" solicitors to represent him for nothing.

Judge Thorne referred to the letter dated 21 August 2019 requesting an adjournment, stating that it was written as if drafted by the appellant although the appellant told him that he had not drafted it and was illiterate.

The appellant answered various questions asked by Judge Thorne, saying that he lived in Harrow with a woman who was just a friend, and that he was fit and well and not on any medication. He said that he was unemployed and had no money at all. He also referred to having a British citizen daughter who was now over 21 years of age but he did not see much of her as she lived with her mother and her mother did not like him. He was, however, still officially married to her mother although they separated many years ago. He said that he had no other relatives in the UK.

He went on to state that his mother lived in Jamaica but he had not spoken to her for a year. She lived with her grandchildren. He also said that he had one brother living in Jamaica but had not spoken to him for 10 years. He referred to

a daughter there who was 25 years of age and said that he last spoke to her two weeks before the hearing. She lived with her partner and 2 year old child.

After being asked what further information he wanted to submit and which required an adjournment the appellant said that “I want to get my file. There are some bits and pieces. I want to get them and put them before the court. I want to get my Jamaican passport and my biometric card.”

The application for an adjournment was resisted by the respondent’s representative and at [27] Judge Thorne said this:

“I concluded that the interests of justice did not require [an] adjournment and that no useful purpose would be served. I therefore proceeded.”

The letter requesting an adjournment dated 21 August 2019 appears to be signed by the appellant in manuscript. It is written in the first person and therefore one can readily understand why Judge Thorne decided that it was written as if drafted by the appellant, although he did not actually make a concrete finding to that effect.

The letter refers to alleged failings on the part of Jein Solicitors, stating that he had not seen the respondent’s decision letter until 16 August 2019 (five days before the hearing). The letter also states that the solicitors refused to provide him with a copy of the letter but eventually did so. The letter also states that it was only on Friday 16 August that he was told about the hearing on Tuesday, 21 August.

In relation to one of the reasons given in the respondent’s decision for refusing his application for leave to remain, namely that he was dishonest by not disclosing a conviction, it states in the letter that he was told that if his conviction was over 10 years old he did not need to disclose it. It then says that he sought urgent legal representation to prepare his appeal bundle and prepare for the hearing. The letter cites *Nwaigwe (adjournment: fairness)* [2014] UKUT 00418 (IAC) and quotes from it.

The letter goes on to state that it is not his fault that the Home Office sent the refusal letter to Jein Solicitors and that they did not “tell me or list me under the court papers” and it requests time to prepare for the hearing and make a witness statement.

It then states that:

“Whether or not it would be reasonable to refuse an adjournment is an academic question. But faced with a lack of current papers, only being notified of my refusal, appeal and subsequent hearing date 4 days ago I have lack of documentary evidence, proceeding in such circumstances would deny me a fair hearing.”

It then requests that the hearing listed for 21 August 2019 at Taylor House be adjourned and subsequently relisted on the first available date, saying that “I am at Court to request the adjournment in person.”

As I have already indicated, from the perspective of the letter being written in the first person it does suggest that it was written by the appellant, which is inconsistent with his claim to be illiterate. It also has what appears to be his signature. On the other hand, there is some merit in what was said on the appellant's behalf by Mr Murphy to the effect that the citation of the case of *Nwaigwe* and other legalistic expressions in the letter tend to suggest that it was not written by him but by the "unidentified" solicitors that he went to see the day before the hearing.

There were undoubtedly inconsistencies in the information put before Judge Thorne. For example, as Mr Singh pointed out, the claim to be illiterate is inconsistent with what the appellant said, recorded at [29], that he had read about people who were returning to Jamaica being killed. Similarly, the claim in the grounds that the appellant was homeless is inconsistent with what appears at [23] where he is recorded as having said that he lived in Harrow with a female friend.

It is not necessary for me to make findings about whether or not the appellant is in fact illiterate. Quite apart from anything else, a person saying that they are illiterate does not necessarily mean that they are literally unable to read. However, contrary to what is said in the grounds, the appellant plainly was not homeless at the hearing before Judge Thorne in the light of what he said about where he was living.

In addition, what is asserted in the grounds about an issue arising in terms of the appellant's cognitive ability because he was apparently unable to remember the name of the solicitors that he went to see the day before the hearing, seems to me to be a speculative assertion. Whereas the grounds suggest that reports might have been obtained in advance of the hearing in relation to the appellant's cognitive abilities, that is inconsistent with his having said that he was fit and well and not on any medication.

Judge Thorne concluded that no useful purpose would be served by adjourning the hearing and that the interests of justice did not require it. One can readily see why he concluded that no useful purpose would be served by adjourning the hearing in circumstances where the appellant said that he had been told by the solicitors who drafted the letter on a *pro bono* basis that they required to be paid in order to represent him and he hoped that he could get an adjournment and persuade them to represent him for nothing.

However, as was said in *SH (Afghanistan) v Secretary of State for the Home Department* [2011] EWCA Civ 1284, the test in relation to whether the judge ought to have granted an adjournment was not one of irrationality or whether refusing the adjournment was a decision properly open to him, or was *Wednesbury* unreasonable or perverse. The Court held at [13]-[14] that "The test and sole test was whether it was unfair." Put another way, "what does fairness demand?".

I am satisfied that Judge Thorne did not approach the question of the adjournment on that basis. I do not consider that it could be said that the appellant had no prospect of securing legal representation. I disagree with

what is said in the grounds to the effect that the fact that the appellant was unrepresented would in itself constitute a good reason to adjourn the case. Mr Murphy quite properly disavowed that aspect of the grounds. Nor do I consider that an unrepresented appellant can never have a fair hearing. However, in this case there was no express finding by Judge Thorne that the appellant was not telling the truth about having sought representation from solicitors other than Jein Solicitors, and he made no finding to the effect that the letter requesting an adjournment was written by the appellant, albeit that one can detect some understandable scepticism on his part on those issues. There were, in my judgement, reasons to believe that the appellant was genuinely seeking legal representation.

Furthermore, Judge Thorne made no finding that the appellant was not telling the truth about only having been notified of the hearing by his former solicitors four days before the hearing and that no preparation for it had been done by them. Although Judge Thorne asked the appellant a number of questions in order to elicit his case, that does not mean that everything of significance was necessarily elicited from the appellant.

Whilst one can see the basis upon which the appeal was in fact dismissed, one ought to be hesitant in concluding that because a claim is apparently weak there was no unfairness in refusing to adjourn a hearing. It would not be appropriate for me to express a view about the strength or weakness of the appellant's case. Suffice to say that in my judgement it could not be said that there was nothing of any legal or evidential value that could be advanced on his behalf which might have affected the outcome of the appeal. In any event, even a person with an apparently weak case is entitled to a fair hearing which allows them to advance the best possible case in the circumstances.

In summary then, bearing in mind that there was information before Judge Thorne which suggested that the appellant had sought legal representation, and taking into account his contention that he only had relatively short notice of the hearing for which he was not prepared, I am satisfied that the judge erred in law in refusing to adjourn the hearing. In coming to that view I make no findings in relation to the allegations raised about the conduct of Jein Solicitors.

Having decided that the First-tier Tribunal's decision must be set aside, the appropriate course, bearing in mind the Senior President's Practice Statement at paragraph 7.2, is for the appeal to be remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Judge Thorne.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the appeal is remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Judge Thorne, with no findings of fact preserved.

