



Upper Tribunal

**(Immigration and Asylum Chamber)
HU/13585/2019 (P)**

Appeal Number:

HU/13587/2019 (P)

THE IMMIGRATION ACTS

Decided under rule 34 (P)

**Decision & Reasons
Promulgated**

On 3 August 2020

On 11 August 2020

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

SYED ALI NAQI

UMME RUBAB

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Representation (by way of written submissions)

For the appellant: Mr M A Khan, Solicitor, Loxford Solicitors

For the respondent: Mr S Kotas, Senior Home Office Presenting Officer

Background

1. This appeal comes before me following the grant of permission to appeal to the appellants by First-tier Tribunal Judge Osborne on 16 April 2020 against the determination of First-tier Tribunal Judge Abebrese, promulgated on 4 February 2020 following a hearing at Taylor House on 6 January 2020.
2. The appellants are a married couple and nationals of Pakistan born on 20 August 1983 and 13 November 1992 respectively. The first appellant entered the UK on 18 September 2010 with entry clearance as a student valid until 16 April 2012. On 5 April 2012 the first appellant submitted an application for Tier 1 post study leave to remain however this was refused with an in country right of appeal on 31 December 2012. He succeeded in his appeal against this decision and obtained further leave on that basis until 6 April 2019. On 5 April 2019, he submitted the present application for leave to remain outside the rules. Meanwhile, he second appellant entered on 13 December 2018 with entry clearance as a dependant. She remained a dependant in the April 2019 application.
3. When the appeal came before the judge in January at Taylor House, the appellants' representative made an application for an adjournment on the grounds that the first appellant had had a medical emergency that morning and had been taken to the Accident and Emergency Department of Newham University Hospital. Evidence from the hospital was provided to show that he was being assessed and was unable to attend the appeal hearing. The second appellant was said to have accompanied him to the hospital.
4. The judge was not satisfied as to why the second appellant had been unable to attend the hearing. He did not accept the explanation that she had accompanied her husband because he had not yet been diagnosed and because the hearing was important. He considered that the evidence from the hospital did not indicate that the first appellant would be unavailable to attend the hearing if time were allowed for "her" to travel to the Tribunal. He, therefore, refused the application for an adjournment and when the representative withdrew from the proceedings he continued on the basis of submissions from the respondent and subsequently dismissed the appeal.

5. Permission to appeal was granted by First-tier Tribunal Judge Osborne on the grounds that the judge had arguably erred in refusing the adjournment in respect of both appellants, that it was arguable that the attendance at hospital was an emergency and that it was reasonable for the second appellant to accompany her husband.

Covid-19 crisis: preliminary matters

6. The matter would normally have been listed for a hearing at Field House but due to the Covid-19 pandemic and need to take precautions against its spread, this did not happen and directions were sent to the parties on 26 June 2020. They were asked to present any objections to the matter being dealt with on the papers and to make any further submissions on the error of law issue within certain time limits.
7. The Tribunal has received written submissions from both parties. Both are content for the matter to be decided on the papers. I now consider the matter.
8. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, the Presidential Guidance Note No 1 2020: Arrangements during the Covid-19 pandemic (PGN) and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "*to enable the Upper Tribunal to deal with cases fairly and justly*". To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).
9. I have had careful regard to the submissions made and to all the evidence before me before deciding how to proceed. I take the view that a full account of the facts are set out in those papers and that the issue to be decided is a narrow one. I have regard to the importance of the matter to the appellants and consider that a speedy determination of this matter is in their best interests. I am satisfied that I am able to fairly and justly deal with this matter on the papers before me and I now proceed to do so.

Submissions

10. The respondent's written submissions are dated 3 July 2020 and the appellants' submissions are undated but were emailed to the Tribunal on 17 July 2020.

Discussion and conclusions

11. I have considered all the evidence, the grounds for permission and the submissions made by both parties. I am satisfied that for the following reasons the judge's determination contains errors of law and that his decision is in all respects unsustainable.
12. The respondent fairly concedes in written submissions that given the evidence from the hospital, it was clearly unfair for the hearing to have proceeded in the absence of the appellants irrespective of whether the second appellant could have attended. A remittal of the appeals to the First-tier Tribunal is suggested.
13. In brief reply, the appellants' representatives agree with that suggestion.
14. I agree that a remittal to the First-tier Tribunal is the only way forward. Whatever the strengths or weaknesses of the appeals, the appellants were entitled to a fair hearing and they have not had one. There was evidence from Newham Hospital to show that the appellant had arrived there at 08.41 and was awaiting diagnosis. It was reasonable that his wife had accompanied him and that she could not, therefore, attend the hearing. In considering the adjournment application, the judge failed entirely to consider whether it was fair to proceed in the absence of the first appellant, whatever he may have thought of the second appellant's desire to stay with her husband until the problem had been diagnosed and resolved. His reference to the first appellant travelling to the hearing is probably an error because he then refers to that individual in the female gender (at 7). If it was meant to refer to the first appellant, then the judge's reasoning is even more incomprehensible.
15. I would note, particularly in view of the respondent's concession, that it was unfortunate that the Presenting Officer at the hearing did not take a similar approach to that now taken by the Secretary of State. Had he done so and had he not opposed the adjournment request, there may well have been no need for these proceedings and no delay in the determination of the appeals.
16. I would further note that the judge's determination does not show that adequate scrutiny was given to its preparation. It contains numerous typographical errors and appears to have

been considered with reference to a return to Bangladesh instead of Pakistan (at 11).

Decision

17. The decision of the First-tier Tribunal is set aside in its entirety. The appeals are remitted to another judge of the First-tier Tribunal for a fresh hearing and for a decision to be made on all issues.

Anonymity

18. There has been no request for an anonymity order at any stage and I see no reason to make one.

Directions

19. Directions for the hearing shall be provided in due course by the First-tier Tribunal.

Signed

R. Kekić

Upper Tribunal Judge

Date: 3 August 2020