



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10533/2019**

THE IMMIGRATION ACTS

**Heard at Field House
On 1 July 2021**

**Decision & Reasons Promulgated
On 15 July 2021**

Before

UPPER TRIBUNAL JUDGE OWENS

Between

**MNS
(Anonymity Direction Made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME OFFICE

Respondent

Representation:

For the Appellant: Not present/unrepresented

For the Respondent: Ms Isherwood, Senior Presenting Officer

DECISION AND REASONS

The appellant has appealed against a decision of First-tier Tribunal Judge Davison sent on 15 January 2020, dismissing the appellant's appeal against the decision to refuse his asylum and human rights claim. First-tier Tribunal Judge Grant-Hutchinson granted permission on 14 February 2020.

Preliminary Issue

The appellant failed to attend the hearing. I checked that the notice of hearing had been sent to the correct address. This was the address in Gravesend that the appellant had used both in his appeal against the decision of the Secretary

of State to the First-tier Tribunal and also in the application for permission to appeal to the Upper Tribunal. The appellant has not contacted the Tribunal to provide details of a new address. The Notice of hearing was sent on 9 June 2021 over three weeks prior to the hearing.

The appellant also failed to join the case management hearing which was listed to be heard remotely on 19 January 2021. Directions were issued on the same date informing the appellant that he should inform the Tribunal immediately if he were not able to attend the hearing. The appellant did not respond to directions. There was no record of the appellant contacting the Tribunal to request an adjournment.

I checked to see if the appellant had contacted the Tribunal, but he had not. The clerk located a telephone number for the appellant but it has been disconnected.

I waited for 15 minutes prior to deciding whether to proceed in the absence of the appellant in accordance with rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('the Procedure Rules').

I considered whether it was fair and in the interests of justice to proceed with the hearing in the absence of the appellant. In making this decision, I considered first the history of this appeal. The appellant has a history of failing to attend appointments and failing to attend hearings. The appellant failed to attend his substantive asylum interviews in 2019 and the decision to refuse his claim was taken on the basis of a witness statement he submitted to the Secretary of State. The appeal against his original decision was originally listed for a pre-hearing review on 15 November 2019. On 8 November the appellant's then representative Louis Kennedy Solicitors informed the Tribunal that they were no longer instructed. The appeal was listed for 29 November 2019. On 14 November 2019 York Solicitors requested an adjournment on the basis that the appellant wished to instruct a psychiatrist; they needed to obtain medical records and because the appellant required more time to obtain evidence from relatives in India. The representative asked for the appeal not to be relisted until after the first week in January 2020. The appeal was adjourned and relisted on 8 January 2020. The appellant did not submit a bundle of evidence on which he intended to rely. On 7 July 2020 York Solicitors sent a short letter confirming that they were no longer instructed by the appellant.

The appellant did not attend the asylum appeal hearing on 8 July 2020 although he sent a short letter by email on the date of the hearing at 10.04 stating that he would not be present at the hearing because he was unwell.

The appeal to the Upper Tribunal concerns the lawfulness of the judge's decision to not to adjourn that hearing and proceed in the absence of the appellant. I note that the appellant's appeal to the Upper Tribunal following the dismissal of his appeal at the First-tier Tribunal was swiftly prepared and submitted in fluent English.

Following the grant of permission by the First-tier Tribunal, directions were issued on 20 March 2020. The appellant was directed that he might submit further submissions by 17 April 2020. On 22 June 2020 further directions were issued. The appellant did not respond to either of these directions. The case was listed for a remote case management hearing on 19 January 2021. The appellant failed to join the case management hearing on 19 January 2021 at the Upper Tribunal and failed to respond to the new directions. The appeal was then listed for a face-to-face hearing before me.

In these circumstances, I am satisfied that the appellant has failed to cooperate fully with the asylum or appeals process and that his persistent failure to attend court amounts to an abuse of process demonstrating little respect for the UK court system or the cost to the public taxpayer in vacated hearings.

I also consider that the avoidance of delay is one of the overriding objectives of the rules. I do not consider that it is in the interests of justice to delay this matter any further.

I take into account that this appeal concerns a claim for asylum and is important to the appellant and that the appellant is unrepresented. I also take into account his purported lack of English although in this respect I note that the grounds of appeal to the Upper Tribunal have been drafted in fluent English, indicating either that the appellant does have a grasp of English or that he has at least access to someone who can assist him. However, I also take into account that the appellant has been given several opportunities to pursue his appeal and has failed to date to submit any evidence. Given that his ground of appeal is that it was procedurally unfair for the First-tier Tribunal to proceed in his absence one would have expected him to make every effort to attend his appeal at the Upper Tribunal or give an explanation for his absence and he has not.

Further and in any event, the substantive asylum claim has little merit given that the appellant's fear relates to a third-party agent, namely members his own extended family and at its highest the risk to him is localised. The appellant has not provided evidence as to why he is unable to relocate elsewhere in India which is a vast and populous country particularly in the light of his ability to survive in the UK where he remains unlawfully. Nor has he demonstrated that the authorities in India would be unable to protect him. The appellant did not submit any evidence of why he is unable to obtain medication or medical treatment in India.

Having considered all of these factors I am satisfied that the appellant was on notice of the hearing and that it was fair to proceed in his absence in accordance with rule 38 of the Procedure Rules.

Background

The appellant is a citizen of India born on 18 November 1984. He arrived unlawfully in the UK on 23 November 2016. He was served with illegal entry documents and released with reporting conditions. He failed to report. He was

encountered at a residential address on 9 August 2018 and detained with a view to removal. He claimed asylum on 13 August 2018 whilst in detention and had a screening interview on 22 August 2018. He was released from detention on bail on 18 September 2018. He completed a questionnaire and was due to be interviewed on 29 May 2019. On 28 May 2019 his legal representatives sent in a psychiatric report and stated that he had a GP appointment and was unable to attend. He did not attend the substantive interview. A further substantive interview was booked for 19 June 2019. On 14 June 2019 a phone call was received stating that the appellant could not attend the interview because his medication made him drowsy. The respondent agreed to give the appellant time to submit a witness statement and consider the claim on the papers. The representatives requested an extension of time in respect of the witness statement. The witness statement was submitted on 10 July 2019. The claim was then determined on the papers and refused on 16 October 2019.

The appellant asserts that he is at risk on return to India because there is a land dispute between his father and his uncle and that he has been attacked by various members of his family including his uncle and his cousins.

The respondent did not accept his account because the appellant had previously worked in Oman for four years and when initially encountered, he stated that he had come here to work and did not wish to claim asylum. Later, he also stated that he did not fear returning to India and that he had also worked in Italy. His failure to claim asylum at the first possible opportunity in the view of the respondent damages the credibility of his claim. There were also inconsistencies in the appellant's account as to how he raised the money to travel to the UK.

In any event, even taking the claim at its highest, the respondent considered that the appellant had both the possibility of seeking protection from the Indian authorities or relocating elsewhere in India. The respondent considered that the appellant could not demonstrate that there were very significant obstacles to his return to India and that there were no exceptional circumstances which would render his removal unduly harsh. The appellant had not made out an Article 3 ECHR medical claim.

The decision of the First-tier Tribunal

On the day of the hearing, the judge received notification that the appellant would not be attending the appeal. The judge then considered whether to adjourn the appeal and having heard submissions from the respondent decided to proceed in the absence of the appellant.

The judge dismissed the appeal against the decision to refuse the asylum and human rights claim. The judge did not accept the appellant's account and in the alternative, noted that there was both sufficiency of protection and internal relocation options open to the appellant in India. The judge found that his Article 8 ECHR claim was based on his private life and medical issues. The judge found that the appellant had not adduced evidence that the medication he takes is not available in India and that his health condition did not engage

Article 3 ECHR. The judge found that the factors at 117B do not assist the appellant who has worked illegally in the UK, not paid for medical treatment and does not speak English.

Grounds of Appeal ('UT')

Procedural Unfairness

The appellant asserts that it was unfair for the judge to have proceeded with the appeal in his absence because he was self-represented and did not know he had to apply for an adjournment. He managed to inform the court that he was not well. He was suffering from severe backache and not well enough to travel to court and was not able to get a letter from his GP. He was unrepresented. The respondent should not have looked up the drug naproxen. The appellant was deprived of the right to present his case and of the right to a fair hearing.

Permission to appeal

Permission was granted by First-tier Tribunal Judge Grant-Hutchinson on the basis that it is arguable that the appellant's attendance and any further documentation which he may seek to lodge may have made a material difference to the outcome of the appeal.

Discussion and Analysis

The respondent contends that the judge directed himself appropriately and dealt with the failure to attend the hearing in a fair manner. The respondent further submits that in his grounds of appeal to the Upper Tribunal the appellant did not provide any further medical evidence to support his claim that he was too unwell to attend and his grounds demonstrate a good knowledge of English.

The judge dealt with the appellant's absence as a preliminary issue. The judge first took into account that the previous hearing was adjourned in order to obtain further evidence and that no further evidence had been provided and that the representatives were no longer representing.

The judge noted that at [3]

'On the morning of the hearing an email was received by the appellant stating ;

I am writing to inform that I am unable to attend the hearing today as I am not well. I am attaching a copy of the prescription I got from White House Surgery Walking Centre as proof. I apologise for not attending and can you kindly inform the judge.

The prescription was attached showed the appellant had been prescribed naproxen and he was to take one 500mg tablet at day'.

The judge properly noted that the appellant had not requested an adjournment but had merely stated that he would not be in attendance. The judge then

indicated that he would consider whether it would be fair to adjourn the appeal and invited the respondent to make submissions. The appellant's assertion that he did not know that he had to request an adjournment is not made out in these circumstances because the judge considered whether to adjourn the appeal on his own motion in any event. Further, his claim that he did not realise that he had to request an adjournment is not supported by the fact that on previous occasions he has both requested his asylum interview to be delayed and asked the court to adjourn the appeal.

The respondent looked up the medication and found that it was a pain killer/anti-inflammatory and submitted that it did not explain why the appellant had not attended the hearing. The respondent pointed to the appellant's previous failure to attend two asylum interviews and to the fact that the appeal had previously adjourned and that no evidence had been submitted.

I am in agreement that the judge directed himself appropriately. The judge at [5] referred to Nwaigwe [2014] UKUT 000418 (IAC) and replicates the headnote and other passages from this authority.

The judge was manifestly aware that the main issue for him to decide was whether it was fair for him to adjourn the hearing. The judge then directed himself to the Presidential Guidance Note 1 of 2014 and referred to fact that dealing with cases fairly and justly includes 'avoiding delay, so far as compatible with proper consideration of the issues'.

The judge stated at [8]

'Having considered all of the above and balancing the competing interests of fairness and avoiding delay, I decided to proceed to hear the appeal'.

From this I am satisfied that the judge took into account the appellant's history including his previous absconding, his prior failure to attend his substantive asylum interviews and the fact that the appellant's asylum appeal had previously been adjourned in order to provide evidence and that none was provided. These were matters which were properly open to the judge to consider.

Although it may have been beyond the remit of the respondent to look up the medication, there certainly was no medical evidence before the judge which provided a casual link between the appellant's prescription and his inability to attend the hearing or his ability to attend a future hearing. The prescription did not state that the appellant was too unwell to attend. There was certainly no doctor's letter to this effect and in the covering letter the appellant stated that he was 'not well' without giving any further explanation. The appellant had some knowledge of English and was aware that the hearing was taking place. The prescription was dated 8 January 2020 indicating that the appellant had been able to attend his doctor on the day of the hearing.

The judge was entitled to take into account the avoidance of delay and although not explicitly stated in the preliminary issue section, the judge clearly

had in mind that the asylum claim could not succeed even taking the case at its highest.

I am satisfied that the judge took into consideration relevant matters, did not take into consideration relevant matters, took account of the overriding objective of the Procedure Rules and the duty to act fairly and that the decision not to adjourn the appeal was not procedurally unfair or unlawful.

Conclusion

It follows that the appellant's grounds of appeal are not made out and his appeal is dismissed.

Decision

The decision of the First-tier Tribunal dismissing the appeal is upheld.

Anonymity Direction

I am mindful of Guidance Note 2013, No 1. concerned with anonymity orders and I observe that the starting point for consideration of anonymity orders in this Chamber of the Upper Tribunal is open justice. However, I note paragraph 13 of the Guidance Note where it is confirmed that it is the present practice of both the First tier Tribunal and this Tribunal that an anonymity direction is made in all appeals raising asylum or other international protection claims. Pursuant to Rule 14 of the 2008 Procedure rules I make an anonymity direction.

“Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Signed RJ *Owens*

Upper Tribunal Judge Owens

Date **7 July 2021**