



**Upper Tribunal
Immigration and Asylum Chamber**

**Appeal Number: IA/25535/2014
IA/25536/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 9 October 2015**

**Decision and Reasons
Promulgated
On 13 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

BETWEEN

**ISD
DJ**

(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Rungasamy, legal representative, Lawrence & Associates Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the decision, promulgated on 7 May 2015, of First-tier Tribunal Judge P-J White (hereinafter referred to as the FTTJ). Permission to appeal was granted by FTTJ Grant-Hutchison on 30 July 2015.

2. On 22 April 2006, the appellants, who are husband and wife, entered the United Kingdom as visitors. Their leave was serially extended as a student and student dependent until 27 January 2014. On 20 January 2014, the appellants sought leave to remain in the United Kingdom on human rights grounds.
3. In refusing the appellants application, the respondent noted that the appellants were both nationals of Mauritius who had no lawful immigration status in the United Kingdom; it was not accepted that they had lost ties to their home country and there were said to be no exceptional circumstances which might merit a grant of leave outside the Rules. The Secretary of State noted that the appellants had buried their deceased child in the United Kingdom but considered that they could apply for leave to enter as visitors in order to visit the grave.
4. At the hearing before the FTTJ, neither appellant was present and an adjournment was sought on their behalves for a psychiatric report to be produced in relation to them both. The second appellant was also said to have made a very recent suicide attempt. The FTTJ refused that application as he considered there had been ample time to produce this evidence and there was no evidence as to the inability of the appellants to attend the hearing. The hearing then proceeded by way of submissions. On behalf of the appellants it was argued that the mental health of the second appellant had deteriorated and that he was seeking time to recover. For the respondent, it was argued that the appellants had ties to Mauritius and that mental health care was available there.
5. The grounds of application focused on the refusal to adjourn the hearing. It was said that the FTTJ placed insufficient weight on a letter from the Private Therapy Clinic requesting an extension of time to carry out psychiatric assessments. The fact that the same letter referred to the second appellant's treatment was said to clearly suggest that he had mental health issues. It was also said that the FTTJ had speculated regarding the appellants' medical conditions.
6. Permission was granted on the basis that it was arguable that the psychiatric report could have made a material difference to the outcome of the proceedings including the proportionality exercise under Article 8 ECHR.
7. The respondent filed a Rule 24 response on 5 August 2015. Essentially, the respondent opposed the appeal; considered that the FTTJ directed himself appropriately and that he was entitled to reach the conclusions he did.
8. At the hearing before me, Mr Rungasamy submitted a letter from Dr Rebecca Spelman, the Clinical Director, of the Private Therapy Clinic, at which the second appellant is currently receiving treatment. That letter confirms that on 16 February 2015, the Clinic requested an

additional month to complete the report in relation to the second appellant. The said report was completed on 11 March 2015, by Dr Marzio Ascione. The letter concludes by indicating that were a further, updated, report to be required, the second appellant would need to be re-assessed.

9. Mr Rungasamy submitted that it was unfair of the FTTJ to refuse to adjourn the appeals and that a psychiatric report would have made a significant difference. He stressed that the appellants were only seeking an adjournment of a month and were not present.
10. In terms of the significance of the psychiatric evidence sought, Mr Rungasamy argued that the report would have given some indication of the appellants' current mental states and prescribed medication. With that information, the appellants might have been able to put forward arguments as to the availability and affordability of medical treatment in Mauritius and they might have been in a position to attend and give live evidence at a subsequent hearing.
11. Mr Walker indicated that he saw some force in the appellants' argument, however asked me to note that the report of 11 March 2015 was never submitted. In terms of materiality, Mr Walker argued that, in any event, the FTTJ considered the availability of mental health treatment in Mauritius.
12. In reply, Mr Rungasamy conceded that in general treatment was available for mental health conditions in Mauritius, however there was no evidence as to what particular disorder the appellants were suffering from and therefore it would be difficult to know whether treatment was available for them without that information. The assessment of the FTTJ was based on a false premise. Finally, while the report was available, this was after the hearing when the decision had already been reserved.
13. At the end of the hearing, I concluded that the FTTJ had materially erred in that he fell into procedural error in refusing the appellants' adjournment application for the following reasons.
14. The FTTJ was not correct in stating at [10] that the appellants' solicitors had ample time to have obtained a report. A letter from Dr Spelman dated 16 February 2014, at [20] of the decision, referred to a very recent and significant deterioration in the second appellant's mental state. Dr Spelman's letter stated that the second appellant's mental state needed additional assessment would be done and that this and a report would be ready within an additional month. Furthermore, the FTTJ was told that the second appellant had made an attempt on his life just nine days prior to the hearing. The FTTJ made adverse comment regarding the absence of any mention of a suicide attempt in the appellants' witness statements. However, these statements were unsigned and undated and therefore it cannot be

said when they were compiled.

15. Despite refusing to adjourn for psychiatric reports, the FTTJ at [16] places weight on the fact that no medical evidence was submitted; that the extent of the evidence before him was limited [20]; at [24] that there was “no evidence about the length of time for which the second appellant anticipates needing treatment” and there was no “evidence save the assertions made in the appellants’ witness statements, which are not supported by the attendance of either of them.”
16. I have had regard to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 regarding the power the First-tier Tribunal has to adjourn or postpone a hearing under its case management powers. Regard should have been had to the overriding objective set out in Rule 2 requiring the Tribunal to deal with cases fairly and justly.
17. I have also had regard to the decision in Nwaigwe (Adjournment: Fairness) [2014] UKUT 00418 (IAC). The crucial question being whether the refusal of an adjournment deprived the affected party of a right to a fair hearing. I have also taken into consideration the Presidential Guidance note no. 1 of 2014 and note that factors weighing in favour of adjourning an appeal, even at a late stage, include whether further time is needed because of a delay in obtaining evidence which is outside the party's control, for example, where an expert witness fails to provide a report within the period expected. That is to be balanced by factors weighing against the grant of an adjournment, namely that the application was not made at the earliest opportunity or is speculative or that it does not show that anything material would be achieved by the delay.
18. In SH (Afghanistan) v SSHD [2011] EWCA Civ 1284 at [13], it was held that when considering whether an adjournment should have been granted, the test was not irrationality or whether the decision was properly open to the FTTJ; the sole test was whether it was unfair. As stated in Nwaigwe, supra, in practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. I find that the appellants have been so deprived.
19. I find from the background circumstances that prevailed at the date of the hearing before the First-tier Tribunal, that fairness in this case required that an adjournment should have been granted for the purpose of obtaining a psychiatric report. That could have informed the Tribunal whether the appellants’ mental conditions were severe to the extent that they were entitled to succeed on that ground, coupled with the lack of access to necessary care and treatment available in Mauritius.
20. Having regard to the case law and the 2014 rules, I find that the

decision of the First-tier Tribunal refusing the adjournment was unfair in the circumstances. I accordingly set aside the decision of the First-tier Tribunal.

21. I have had regard to the Senior President's Practice Statement regarding remitting an appeal to the First-tier Tribunal for a fresh decision. However, I am satisfied that the effect of the error has been to deprive the appellants of an opportunity to have their case properly put and considered by the First-tier Tribunal. This is accordingly an appropriate case for remittal. The appeal is accordingly remitted to the First-tier Tribunal for a fresh decision to be made.
22. No anonymity direction was made by the FTTJ, however, an application has now been made and given the deeply personal nature of the appellants' particular circumstances, I consider it appropriate to make the following anonymity direction:

"Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellants. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings."

Conclusions

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision to be re-made.

The appeal is to be remitted to the First-tier Tribunal, at Hatton Cross, to be decided by any judge other than FTTJ P-J White, with a time estimate of 2 hours.

Signed:

Date: 11 October 2015

Deputy Upper Tribunal Judge Kamara