



IAC-TH-CP-V1

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

Appeal Number: IA/27774/2014

THE IMMIGRATION ACTS

Heard at Field House

Decision & Directions

On 20 August 2015

Promulgated

On 27 August 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

**MRS SOREYA MOHAMED ALI RAMADAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. S. Haji, Counsel.

For the Respondent: Ms. E. Savage, Home Office Presenting Officer.

DECISION AND DIRECTIONS

1. The appellant is a citizen of Sudan who appealed against a decision made on 20 June 2014 to refuse a variation of her leave to remain in the United Kingdom. She subsequently appealed and following a hearing at Hatton Cross and in a decision promulgated on 16 April 2015 Judge of the First-tier Tribunal Wylie dismissed her appeal.
2. Permission to appeal was sought on the basis that, amongst other things, the judge failed to give proper adequate reasons for refusing to grant an

adjournment. The position is dealt with at paragraphs 3 and 4 of the judge's decision which state:-

"3. The appellant attended the hearing. She was not represented. She stated that she had thought that she was attending a Home Office interview and it was only yesterday that the person helping her had told her the appointment was the Tribunal hearing. She asked that the hearing be adjourned. She wanted to lodge additional papers.

4. It was not clear what these additional papers would be. I considered that it would be fair and in the interests of justice that the hearing proceed, but that if it appeared that further documents were available and would assist the process, the case could be adjourned part-heard. In the event I considered there were no documents which would assist the court further in reaching a decision on the appeal."

3. On 3 July 2015 Judge P J M Hollingworth gave his reasons for granting permission to appeal. They state:-

"1. An arguable error of law has arisen in relation to the scope of the consideration of whether there would be a breach of Article 8. It is arguable that the Judge has not set out an adequate analysis of the criteria to be considered and the application of Section 117 given that the child of the Appellant and her husband are both British citizens.

2. An arguable error of law has also arisen in relation to the refusal of the adjournment. The Appellant was unrepresented. The circumstances are set out by the Judge at paragraph 3. At paragraph 4 the Judge refers to it not being clear what the additional papers would be. At the conclusion of paragraph 4 the Judge states that in the event he considered there were no documents which would assist the Court further in reaching a decision on the appeal. This is a clear reference to not adjourning the case part-heard. The reasoning of the Judge as to whether or not any documents of potential relevance existed remains unclear in the decision. An arguable error of law arises in this respect given the need for fairness."

4. Thus the appeal came before me this afternoon.

5. I took account of the totality of the material including a skeleton argument prepared by Ms Haji for the purpose of today's hearing. So far as the first ground is concerned, namely the failure to grant an adjournment, she argued that this brought about a procedural unfairness and was unreasonable in all the circumstances. It was necessary in the interests of justice that the appellant be able to file additional documentary evidence and witness statements to rebut the reasons for refusal and instruct a

legal representative to appear on her behalf. She relied on the authority of **Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC)**.

6. In responding to this first ground Ms Savage argued that at paragraph 4 the judge had properly given consideration to the adjournment application and having considered that she was unable to grant it she rightly indicated that she was able, if necessary, to “go part-heard”. In so doing she had taken account of the “speculative” nature of the appellant’s application and the overriding objective contained within the Procedure Rules. She also relied on guidance issued by the President of the First-tier Tribunal in relation to the issue of adjournments.
7. It is important to emphasise that before the First-tier Tribunal the appellant was unrepresented. Also that she appears to have initially laboured under the misapprehension that she was attending a Home Office interview and it was only the previous day to the hearing that the “person helping her” had told her that the appointment was the Tribunal hearing. In those circumstances I find that the judge has materially erred in the refusal of the adjournment application she made. Any party’s right, here the appellant’s, to a fair hearing is paramount and here, albeit that the judge took into account the overriding objective, she has erred in her application of it to the situation that prevailed before her. The appellant’s right to a fair hearing has been prejudiced by the fettering of her ability to provide documentation that was pertinent to it and which may have been persuasive when it came for the judge to assess the evidence. In the circumstances there has been a procedural unfairness which amounts to a material error of law.
8. Having indicated my view on the first ground the consideration of the other ground became a redundant exercise and both parties were in agreement that where the appellant had been deprived of a fair hearing the appropriate course would be for me to find that a material error of law exists within the judge’s decision and that it should be set aside in its entirety. All parties were agreed that, in the circumstances, it was appropriate for the appeal to be considered and all matters determined afresh by the First-tier Tribunal.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any other judge aside from Judge Wylie.

No anonymity direction is made.

Signed

Date 26 August 2015.

Deputy Upper Tribunal Judge Appleyard

DIRECTIONS

1. This appeal is to be heard at Hatton Cross hearing centre.
2. The time estimate is two hours.
3. The Tribunal is to provide an Arabic (Egyptian/Sudanese) interpreter.

Signed

Date 26 August 2015.

Deputy Upper Tribunal Judge Appleyard