



IAC-AH-DN-V1

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

Appeal Number: AA/10222/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27 January 2016**

**Decision & Reasons Promulgated  
On 10 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW**

**Between**

**MR ZH  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No attendance

For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. 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 Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

2. This is an appeal by the appellant against the decision of the First-tier Tribunal dismissing his appeal against a decision of the respondent taken on 11 November 2014 to refuse his claim for asylum.

### **Background Facts**

3. The claimant is a citizen of Bangladesh who was born on 7 February 1958. He claimed asylum under the Immigration Rules HC 395 (as amended). That application was refused because the respondent did not accept that the appellant's father was a member of Jamat-E-Islami in Bangladesh, that his uncle or nephew had been murdered in Bangladesh, or that his son had been arrested and detained in Bangladesh. The judge concluded that the appellant's account was not credible and that Section 8(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 applied and in consequence the respondent did not accept that the appellant had demonstrated a reasonable degree of likelihood that he would be at real risk of persecution on account of his political beliefs. The respondent did not accept his account about being threatened by a nephew of a friend and did not accept that he was at risk such that he qualified for humanitarian protection or under Articles 2 and 3 of the European Convention on Human Rights. The respondent also did not accept that a decision to remove the appellant would breach his Article 8 rights.

### **The Appeal to the First-tier Tribunal**

4. In a determination promulgated on 14 September 2015 Judge Rodger dismissed the appellant's appeal. The First-tier Tribunal found that the appellant was not credible and that, even applying the lower standard of proof, it did not accept his account of any of the alleged risks or threats that the appellant claimed to face on return to Bangladesh. The Tribunal was not satisfied that the appellant or his father was a political leader and that there was no convincing evidence that the appellant is at risk due to his alleged political activities or those of his father. The Tribunal also found his account not to be credible regarding the allegation that his friend's nephew poses a risk to the appellant. The judge's findings were based largely on inconsistencies between various accounts given by the appellant.

### **The Appeal to the Upper Tribunal**

5. The appellant sought permission to appeal to the Upper Tribunal. The grounds of appeal set out that the hearing on 21 August 2015 before the First-tier Tribunal proceeded in the absence of the appellant. It is asserted that the appellant was an inpatient in hospital at the time of the hearing. The appellant notified the Tribunal prior to the hearing that he was unwell and had been admitted to West Suffolk Hospital. At that time, it had not been possible to provide a letter from the hospital to confirm the appellant's admittance and symptoms. It is contended that the absence of the appellant influenced the determination by the First-tier Tribunal Judge. Enclosed with the application requesting permission to appeal the

appellant provided medical evidence that demonstrated that the appellant was an inpatient in the hospital during the period 18 August 2015 until he was discharged on 24 August 2015. That evidence was not before the First-tier Tribunal Judge on the day of the hearing. On 16 November 2015, First-tier Tribunal Judge Baker granted the appellant permission to appeal. In granting permission to appeal Judge Baker indicated that it was arguable that there was a material error of law in practice and procedure in refusing to grant the adjournment by the First-tier Tribunal Judge.

### **Decision of the First-tier Tribunal on the Adjournment Issue**

6. The First-tier Tribunal set out that at the commencement of the hearing the judge received a fax dated 21 August 2015 from R & A Associates in which Mr Revell requested an adjournment on the basis that he had spoken with the West Suffolk Hospital that morning and that they confirmed that the appellant was admitted to hospital on 18 August and is still under their care. He had been informed that he was receiving care at the cardiac care unit at the hospital and was unable to provide any timescale of the treatment. At paragraph 24 the Tribunal set out as follows:

“I fully considered the application to adjourn. Whilst I accept that there is indication within the papers that the appellant has previously suffered from a previous heart attack in 2009, there was no medical evidence attached to the adjournment request or confirmation from the hospital that the appellant was an inpatient under their care or that he was unfit to attend the hearing or provide instructions or prepare for the appeal. The previous adjournment notice made clear reference to the evidence that would be required for an adjournment and therefore it could not be said that the appellant or his McKenzie friend were unaware of this. There was no-one in attendance for the appellant on the day of the hearing and I also noted that the appellant had failed to comply with the directions regarding the provision of evidence and bundles despite the fact that this matter had been adjourned from March 2015. There was no documentary evidence to persuade me that he was or had been unfit to provide instructions or prepare for this appeal and that there was no reasonable explanation for the failure to have gathered or prepared documents between March 2015 and his alleged admission into hospital for cardiac treatment.

I considered my discretion under Rules 4 and 28 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, and I also took into account the requirements of the overriding objective in Rule 2 of the 2014 Rules. In considering such matters together with the matters set out above, I was not satisfied that it was in the interests of justice to adjourn the hearing due to the lack of medical evidence and failure to serve any further documents or statements in support of the appeal and I was satisfied that a decision to proceed was consistent with and gave effect to the overriding objective. The appellant had sufficient notice of the hearing and had not co-operated with the Tribunal in failing to submit any documents in support of his appeal and had failed to provide documentary proof that he was unable to attend the adjourned oral hearing. I was not satisfied that this was anything other than an attempt to delay the determination of his appeal. I therefore proceeded to hear the appeal in the appellant's absence.”

## **Appeal to this Tribunal**

7. The appellant did not attend the hearing before this Tribunal and was not represented. The day before the hearing on 26 January a fax was received that attached a letter from Papworth Hospital dated 25 January 2015 indicating that the appellant was currently an inpatient at Papworth Hospital. Together with this letter was a statement of fitness for work dated 25 January 2016 advising the appellant that he was not fit for work for a period of seven days from 25 January 2016 to 1 February 2016. It is to be assumed giving the appellant the benefit of the doubt that the letter from Papworth Hospital was intended to be 25 January 2016.
  
8. This appeal has been subject to very many delays commencing on 27 November 2014, when the matter was listed for a pre-hearing review on 22 December 2014 and a full hearing on 24 February 2015. An application for an adjournment was sent on 16 December 2014 indicating that further time would be needed for the pre-hearing review and full hearing to take place. On 23 December 2014 that application for further time was refused the matter remained listed for a full hearing on 24 February 2015. On 24 February 2015 there was no attendance by or on behalf of the appellant and in a fax sent on 23 February 2015 the appellant's representatives informed the Tribunal that the appellant was unwell and had been unwell for a number of weeks. An adjournment was requested. At the hearing on 24 February 2015 the adjournment was granted. The judge set out in an order that a statement of fitness for work is not sufficient for the basis for an application to postpone a hearing because of ill health. Such an application should be accompanied by evidence from a doctor addressing specifically fitness to attend an appeal hearing and fitness to give instructions in preparation for such a hearing and should identify how, if at all, adjustments to a hearing can enable a party to participate effectively notwithstanding ill health. On 2 March 2015 the matter was re-listed for an oral hearing on 21 August 2015. On 14 August 2015 a letter was sent into the Tribunal stating that the appellant still suffers from bouts of dizziness and made an application to allow Mr Revell a right of audience and right to conduct litigation on the appellant's behalf as his advocate. A further request for a short adjournment was requested in order to properly prepare for the appeal and to obtain any copy documents. On 18 August a court order was issued which allowed Mr Revell to assist the appellant at the hearing as a McKenzie friend but refusing the request for an adjournment. A further letter dated 14 August 2015 was received by the Tribunal and came to the attention of the judge on 21 August 2015 – the date of the hearing. It is now nearly a year since this matter was first listed for a full hearing. Against that background it is understandable why the First-tier Tribunal Judge considered that the latest application for an adjournment was nothing other than an attempt to delay the determination of the appellant's appeal.

9. However, it is clear from the First-tier Tribunal's decision that credibility of the appellant was in issue. When considering a request for an adjournment the Tribunal must always yield to a party's right to a fair hearing. As was set out in the case of **Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC)** at paragraph 8:

"In determining applications for adjournments, judges will also be guided by focusing on the overarching criterion established in the overriding objective which is that of fairness."

10. In refusing the adjournment I do consider that the judge was not at fault as she did not have the required evidence to support an adjournment application - the appellant had already been made aware of what was required in the previous order - and against the history of delay and adjournments. However, on the facts of this case given that credibility was core to the appellant's claim and that this is an asylum claim the interests of fairness and the right to a fair hearing were not fully considered by the judge.
11. I find that there was a material error of law in the First-tier Tribunal's decision not to grant an adjournment albeit that the evidence only arrived subsequently. I set aside that decision pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 ('TCEA').
12. I remit the case to the First-tier Tribunal for the case to be heard de-novo before a different judge pursuant to section 12(2)(b) and 12(3)(a) of the TCEA be listed at the next available opportunity at Taylor House.
13. In remitting this matter I draw attention to the following. The appellant has already been directed that a statement of fitness for work is not a sufficient basis for an application to postpone a hearing because of ill health. The appellant has failed to comply with the order of Judge Brown of 24 February 2015. The appellant has failed to comply with directions made on 22 December 2014 requiring the appellant to provide a typed statement detailing fully all facts and circumstances that are to be relied upon, provide a paginated and indexed bundle of all the documents to be relied upon, a chronology of events and a skeleton argument identifying all the relevant issues. There has been no reasonable excuse for failing to comply with these directions.
14. It is clear from the First-tier Tribunal's decision exactly what the credibility issues are and what the inconsistencies are that concerned the First-tier Tribunal Judge. The appellant has had ample opportunity to provide a statement in support of his grounds of appeal but has not done so. The grounds of appeal are minimal and do not engage with the decision of the First-tier Tribunal and do not set out what errors of law are alleged to have arisen in that determination. A court order was issued as long ago as 18 August 2015 allowing Mr Revell to assist the appellant at a hearing as a McKenzie friend.

15. It is not a matter for me to tie the hands of the First-tier Tribunal. However, given the history of adjournments and repeated failure to comply with directions in relation to this appeal I highlight to the appellant that it would appear very unlikely that any further adjournment requests will be granted. The appellant should proceed on this basis and ensure that all the evidence required is put before the judge (and thereby comply with the directions issued over a year ago) so that a fully considered decision can be reached on his claim should his health yet again prevent his attendance at a hearing of his appeal. He has the opportunity to be assisted by Mr Revell at a hearing. The appellant has the opportunity to put in a statement that deals with the credibility issues and inconsistencies noted in the evidence that can be taken into consideration by a judge when considering this matter afresh. This would go a considerable way towards ensuring that the appellant can participate effectively notwithstanding ill health and that case be dealt with fairly notwithstanding the absence of the appellant should that arise.

### **Decision**

16. The decision of the First-tier Tribunal contained a material error of law in failing to accede to the adjournment request given that the appellant was in hospital at the time of the hearing and that credibility was in issue. This matter is remitted for a de-novo hearing before the First-tier Tribunal to be heard at Taylor House on the next available date. The appellant's appeal is allowed to this extent.

Signed P M Ramshaw

Date 7 February 2016

Deputy Upper Tribunal Judge Ramshaw