



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

Appeal Numbers: IA/12606/2015  
IA/12616/2015  
IA/12621/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 1<sup>st</sup> June, 2017 and  
Sent to promulgation  
On 10<sup>th</sup> June 2017**

**Decision & Reasons  
Promulgated**

On 10<sup>th</sup> July 2017

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**[SAIRA W]  
[WAQAR A]  
[A A]**

**(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

*For the Appellants: Mr S Bellara of Counsel, instructed by Ilford Law Chambers  
For the Respondent: Mr T Wilding, a Senior Home Office Presenting Officer*

**DECISION AND REASONS**

1. The three appellants are citizens of Pakistan. The first-named appellant was born on [ ] 1984 and she first entered the United Kingdom on 10<sup>th</sup> October, 2012 with entry clearance granted as a Tier 4 Student valid for the period 26<sup>th</sup> September, 2011 until 21<sup>st</sup> November, 2013. The second-named appellant was born on [ ] 1982 and the third-named appellant born on [ ] 2007 and they both entered the United Kingdom on 10<sup>th</sup> October, 2011 with entry clearance granted as Tier 4 Student dependants valid from 26<sup>th</sup> September, 2011 until 21<sup>st</sup> November, 2013.
2. The first appellant applied for further leave to remain as a Tier 4 Student on 26<sup>th</sup> November, 2012 and this was granted until 27<sup>th</sup> July, 2015. The second and third appellants were granted leave in line with the first appellant.
3. On 3<sup>rd</sup> December, 2014 the first, second and third appellants' leave was curtailed to 6<sup>th</sup> February, 2015.
4. On 5<sup>th</sup> February, 2015 the appellants applied for leave to remain in the United Kingdom on the basis of their private lives in the United Kingdom, claiming that to remove them would breach their Article 8 rights. That application was refused by the respondent on 16<sup>th</sup> March, 2015 and they appealed to the First-tier Tribunal on the basis that removal would breach their Article 8 rights. A Notice of Appeal was received by the Tribunal on 30<sup>th</sup> March, 2015 but unfortunately no fee was submitted. The Tribunal notified the appellants' representatives on 13<sup>th</sup> April, 2015 and subsequently a fee was received.
5. Notice of Hearing was sent to the appellants and their representatives on 2<sup>nd</sup> June, 2015 advising them that the appeal would be heard at Nottingham Justice Centre on 25<sup>th</sup> November, 2015. Those proceedings on 25<sup>th</sup> November, 2015 were adjourned and on 7<sup>th</sup> December, 2015 a fresh Notice of Hearing was sent to the parties advising them that the matter would be heard on Tuesday, 22<sup>nd</sup> March, 2016 at the Nottingham Justice Centre.
6. On 11<sup>th</sup> February, 2016 the appellants' representatives wrote to the Tribunal requesting an adjournment. Imperium Group Immigration Specialists' explanation for the adjournment request was that they had conduct of this matter and a separate case listed on the same day at Richmond Magistrates' Court and the appellants had indicated that they did not wish to change their representative or instruct alternative Counsel because of the cost of the matter.
7. Not surprisingly, the Designated Judge who considered the application refused it on the basis that there was sufficient time for agents or Counsel to be instructed to represent the appellants.
8. At the hearing on 22<sup>nd</sup> March, 2016 the appellants were represented by Mr N Lawrence of Counsel. There appears to have been problems with the

Tribunal's bundles of documents. There was also a note to the appellants' general medical practitioner, a Dr Ryan at Central Surgery, Oadby, dated 22<sup>nd</sup> March, 2016 from the Emergency Department of Leicester Royal Infirmary which included information that the first-named appellant had attended the Leicester Royal Infirmary on 21<sup>st</sup> March presenting with "severe abdo pain". There was a list of investigations being carried out and the A&E diagnosis was "gastro-intestinal - constipation". The basis of the application to adjourn was that the appellant was ill.

9. Notice of adjourned Hearing was issued by the Tribunal on 15<sup>th</sup> April, 2016 advising the parties that the appeal was to be heard on 20<sup>th</sup> October, 2016 at Nottingham Justice Centre. On 30<sup>th</sup> June, 2016 the Tribunal received notification from Haque & Hausmann Solicitors of Whitechapel that they had recently been instructed by the first-named appellant in this matter.
10. On 19<sup>th</sup> October, 2016 at 17.25 hours the appellants' solicitors, Haque & Hausmann, wrote the following:

*"Please note that the lead appellant, Mrs Waqar, has been suffering from sciatica, a kind of severe pain around lower back and leg, for a number of years; however, it becomes unbearable during every winter.*

*Since last two weeks, as the cold approached, it has become unbearable for the appellant and has been on medication; please see the letter from GP for your ease of reference. Hence, the appellant cannot attend the hearing due to her ill health as she can hardly stand or stay sitting for more than few minutes.*

*We have waited to see her conditions until this afternoon in order to assess her suitability to attend the Tribunal tomorrow morning to give evidence and found to have been not favourable as her husband latterly confirmed.*

*Please note that it's an appeal against refusal of a human rights application where evidence of two applicants is crucial and the learned judge cannot be assisted without their presence.*

*In the light of the above, we shall respectfully ask the learned Duty Immigration Judge to grant a short adjournment in order to accommodate the evidence of the appellants. As a result no representation would be made from this office tomorrow."*

11. The judge proceeded to hear the appeal and in the absence of satisfactory evidence from the applicant and dismissed the appeal.
12. Applications for permission to appeal were submitted on behalf of the applicants and on 23<sup>rd</sup> March, 2015 First-tier Tribunal Judge M J Gillespie said this:

“2. The ground of appeal advanced is procedural irregularity causing unfairness to the applicants, in that a request for adjournment was refused without good reason and in circumstances where the matter could not safely be determined in the absence of oral evidence.

3. The dissatisfaction of the judge with the extremely presumptuous and manipulative proceedings by the appellants' solicitors was clear and well-founded. Those solicitors, in

a manner which I consider unprofessional, sent a belated written request for adjournment, the evening before the hearing, in circumstances when there were no witness statements by the appellant before the Tribunal. They were, moreover, apparently advising the appellants not to attend the hearing. They intimated in the written request that they too would not attend. I recognise this as a deplorable abuse of process and suggestive of a degree of contumely.

4. It is nevertheless the case, that in deciding not to be swayed by such irresponsible conduct, the learned judge committed himself to making a decision on the papers, potentially without adequate evidence for the appellants, written or otherwise, and even without representation by the Home Office. It is arguable that to do so was a procedural irregularity amounting to an error of law and that the righteous dissatisfaction entertained towards the solicitors ought to have been addressed in a manner other than proceeding with the appeal in the absence of the applicants.”

13. At the hearing before me the appellants were represented by Mr Bellara. I drew his attention to the letter of 19<sup>th</sup> October, 2016 from Messrs. Haque & Hausmann and to the letter which accompanied that of 19<sup>th</sup> October, 2016 signed by Dr L Ryan of Central Surgery, Oadby which said:

“I can confirm that this lady attended the surgery on 17/10/16 with symptoms of pain in the back and right leg. We are treating her for sciatica with pain relief.”

I asked Counsel if he had evidence that, as at that date, the first-named appellant was unable to travel and attend the hearing date. He told me that the appeal concerned complicated issues, but the judge effectively proceeded with a paper hearing unfairly. He, Mr Bellara submitted, should not have done so.

14. Counsel told me that there was no further medical evidence to satisfy the Upper Tribunal that, as at the date of the hearing before the judge, the appellant was unwell and not able to attend the hearing. I pointed out to Mr Bellara that there were in fact no statements submitted on behalf of the appellant either. There were none before the First-tier Tribunal and there are none now before the Upper Tribunal. As a result, Mr Bellara asked me whether I would agree to the matter being adjourned today. He indicated that were I minded to grant a brief adjournment it should be possible to obtain further evidence from the appellants’ medical practitioner and for the appellants’ solicitors to submit written statements. He pointed out that the rights of the child need to be considered because the appellant has a child.
15. Mr Wilding opposed any adjournment. He pointed out that the grounds of appeal had been submitted by Ilford Law Chambers on behalf of the appellant some seven months earlier, during which they had had ample time to obtain evidence and submit witness statements, were they minded to do so. I declined to grant an adjournment and advised Mr Bellara that those instructing him appeared to me to have had more than adequate time in which to obtain medical evidence to show that as at the date of the hearing before the judge the appellant was not in a position to attend the hearing, but had apparently done nothing. Mr Bellara told me that in the

circumstances one could not criticise the judge. It would however, he suggested, be in the interests of justice to grant the application in order that the appeal could be heard afresh and the appellant be given a further opportunity to adduce evidence to a judge. He accepted that the appellant had been very badly let down by her advisers.

16. Mr Wilding told me he had nothing to say.

17. I reserved my decision.

18. Paragraph 28 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 provides at paragraph 28:-

*“If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal -*

*(a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and*

*(b) considers that it is in the interests of justice to proceed with the hearing.”*

19. For many years now the Tribunal and its predecessors have advised immigration practitioners that applications for adjournments on medical grounds should be accompanied by evidence from a registered medical practitioner indicating that an appellant is not fit to attend the hearing and giving adequate reasons for reaching that conclusion. The judge clearly considered the medical evidence which had been submitted and at paragraph 25 of the determination was not satisfied with the explanation given for the appellant's absence. There was no medical evidence before the judge that the appellant was not sufficiently fit to attend the Tribunal hearing. In the letter of 19<sup>th</sup> October, 2016, Haque & Hausmann seek to give further evidence as to the appellant's condition by suggesting that the appellant was suffering from

*“...a kind of severe pain around the lower back and leg, for a number of years; however, it becomes unbearable during every winter”.*

That is not the medical evidence which was before the judge, which was that the appellant presented with symptoms of pain in the back and right leg and that she was being treated for sciatica with pain relief. There was nothing there to suggest that the appellant was unable to travel to the hearing and give oral evidence. The judge was satisfied that the parties had been notified of the date, time and place fixed for the hearing and considered that it was in the interests of justice to proceed with the hearing. The appeal hearing had been adjourned on two earlier occasions.

20. It is surprising that even today there is still no medical evidence to suggest that on the date of the hearing the appellant was suffering with a medical condition which prevented her from attending the hearing to give oral evidence on her behalf and neither has any statement of the appellant been submitted

21. In all the circumstances I am satisfied that the decision of First-tier Tribunal Judge Colyer did not involve the making of an error on a point of law. I uphold the judge's findings.

**Notice of Decision**

The appellants' appeals are dismissed.

There is no anonymity direction

***Richard Chalkley***  
**A Judge of the Upper Tribunal.**

**TO THE RESPONDENT**  
**FEE AWARD**

There is no fee award.

***Richard Chalkley***  
**A Judge of the Upper Tribunal.**