



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

Appeal Number: IA/29174/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 30 August 2017**

**Decision & Reasons Promulgated
On 05 September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**MOHAMMED BELAL UDDIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Ms J. Isherwood (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellant appeals from the decision of the First-tier Tribunal (Judge M A Khan sitting at Harmondsworth on 25 November 2016) dismissing his appeal against the decision made by the Secretary of State on 10 August 2015 to refuse to grant him leave to remain as a student (the appellant

having applied on 5 May 2014) and against her concomitant decision to make directions for his removal under Section 47 of the 2008 Act. The First-tier Tribunal did not make an anonymity direction, and I do not consider that such a direction is required for these proceedings in the Upper Tribunal.

The Reasons for the Grant of Permission to Appeal to the Upper Tribunal

2. On 6 July 2017 Designated Judge McCarthy granted the Appellant permission to appeal on *“the second ground only”* which was that the Judge had failed to identify, and resolve, *“the key issue”* in the appeal, which was whether the Respondent had issued the Appellant with a 60 day letter so as to be able to find a new sponsor, and obtain a new CAS.

The Hearing in the Upper Tribunal

3. The appeal was listed for an oral hearing. However, the day before the hearing Universal Solicitors notified the Upper Tribunal that neither they nor their client would be attending, and they requested that the appeal should be decided on the papers.
4. In a notice issued on 18 July 2017, the Upper Tribunal had notified the parties that it did not have the complete Home Office bundle that was before the Judge, and had directed the parties to file with the Tribunal and serve upon the other party *“any documentary evidence upon which reliance is placed, even if that material has previously been served”*.
5. At the outset of the hearing, I informed Ms Isherwood of the Appellant’s non-attendance and the reason for it. She said she had not seen the letter from the Appellant’s solicitors. She produced a bundle of documents pertaining to the Appellant’s appeal that had been compiled by the Home Office. It was unclear when this bundle had been put together, but her understanding was that it had been compiled pursuant to the direction of 18 July 2017. The bundle included the application form, an undated letter to the Home Office from the Appellant’s previous representatives and *“a statement to vary the application”* apparently signed by the Appellant on 16 July 2015.

Discussion

6. Ground 1 is that the Judge erred in law in refusing to grant an adjournment. Reliance is placed on **Nwaigwe (adjournment: fairness) [2014] UKUT 418 (IAC)**, where the UT said that:

“In practice, in most cases the question will be whether the refusal (of an adjournment) deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of

fairness: was there any deprivation of the affected party's right to a fair hearing?"

7. As was held by Designated Judge McCarthy, this ground is not arguable, and the Appellant has not sought to challenge his decision refusing him permission to pursue it. I mention it, however, because it has a bearing on Ground 2.
8. As noted by the Judge at paragraph [5] of his decision, the Appellant and his legal representatives did not attend the hearing before him. The non-attendance was sought to be justified on the ground that the Appellant was ill. But another Judge had earlier refused to grant an adjournment as the evidence provided only showed that he was unfit for work, not that he was unfit to attend.
9. When granting permission on Ground 2, Designated Judge McCarthy held that the problem over the 60 day letter dispute was exacerbated by the fact that neither party had submitted documents in support of their respective positions. He said that no documents were provided to the First-tier Tribunal by either party, other than the refusal letter and the notice of appeal.
10. If that is right, the Appellant's appeal on common law unfairness grounds (failure by the Respondent to serve a 60 day letter) was bound to fail, as the burden of proof rested with him, and he had not provided any evidence, oral or documentary, to discharge the burden of proof. Mere assertion in the grounds of appeal was and is plainly insufficient.
11. The directions made by the Upper Tribunal gave the Appellant the opportunity to provide documentary evidence to support the case pleaded in the Grounds of Appeal, such as correspondence with the Home Office complaining about the absence of a 60 day letter. The Appellant has not seized this opportunity, and has also eschewed the possibility of giving oral evidence in support of his appeal at the second stage of the hearing before me, assuming that he was able to surmount the preliminary hurdle of showing that the Judge had made a material error.
12. Conversely, the Respondent has provided documentary evidence which tends to indicate that the case pleaded in the Grounds of Appeal is based upon an asserted fact which the Appellant knows to be untrue; and that there was not and is not a genuine dispute of fact about the 60 day letter which the Judge erred in not resolving. For in the statement signed by him on 16 July 2015 the Appellant acknowledged (a) that the licence of his sponsor was *to his knowledge* revoked on 20 May 2015, two weeks after he had made his application; and (b) that the Home Office had issued him with a 60 day letter so he could find a new sponsor and obtain a new CAS.
13. He went on to say that no college would issue him with a new CAS; and so he wished to vary his application for leave to remain as a student to an application for leave to remain outside the rules for a period of 10 to 11

months approximately, while he awaited the outcome of an application to be granted entry clearance to Canada on a skilled migrant programme.

14. The Judge rendered himself vulnerable to a successful error of law challenge by not engaging with the common law unfairness argument pleaded in the Grounds of Appeal, and by using a template which did not fit the reality of the particular case before him. Thus, for example, at paragraph [12] he stated formulaically - and clearly erroneously - that he had considered the appellant's "*written witness statement, the oral evidence and the oral submissions of his legal representative*".
15. However, the conduct of this appeal by the Appellant has been such that he has not shown that the errors made by the Judge are material. No reasonable Tribunal properly directed could have reached any other conclusion than that the Appellant's appeal should be dismissed.

Notice of Decision

16. The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Signed
Deputy Upper Tribunal Judge Monson

Date