



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01567/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 4 October 2017

**Decision & Reasons
Promulgated**

On 19 October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**MR (PAKISTAN)
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Melvin, Counsel

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Manyarara sitting at Hatton Cross on 13 March 2017) dismissing her appeal against the decision of the respondent to refuse to grant her asylum, and to give directions for her removal from the United Kingdom. The First-tier Tribunal made an anonymity direction in the appellant's favour, and I consider that it is appropriate that this direction be maintained for these proceedings in the Upper Tribunal.

Relevant Background Facts

2. The appellant is a national of Pakistan, whose date of birth is 6 September 1978. Her late husband entered the UK on 23 June 2013 for private medical treatment. The appellant entered the UK with their three children on 4 December 2013, all of them holding valid visit visas which ran from 4 November 2013 until 4 May 2014. The appellant's husband died after medical treatment on 6 November 2013, but this news was kept from the appellant by her in-laws until after she had arrived in the UK.
3. On 29 April 2014 the appellant applied for leave to remain as a parent, and on private life grounds. The application was refused on 10 July 2014, and the Secretary of State made a concomitant decision to remove her by way of directions under section 47 of the Immigration, Asylum & Nationality Act 2006.
4. Her appeal against this decision came before Judge Fox. The appellant was acting in person, and she asked for her appeal to be decided without a hearing. In a decision promulgated on 13 November 2014, Judge Fox dismissed her appeal. He noted what the appellant had said in regard to wishing to continue her education, with a view to finding employment in the UK, but he found that this was not a legitimate expectation for a visitor. The circumstances in which she lost her husband were tragic. But, any leave that she was granted, as with her husband, could only have ever been temporary. She must always have had the realistic expectation that she would return to Pakistan after her short visit. If her brother-in-law was happy to continue maintaining her while in the UK, he would be happy to continue maintaining her upon her return to Pakistan.
5. The appellant appealed to the Upper Tribunal, but permission was refused by both the First-tier Tribunal and by the Upper Tribunal. In her reasons, Upper Tribunal Judge McWilliam said that the Judge had considered the appellant's evidence about political unrest in Pakistan, but had found that she had overstated her case. There was nothing that the Judge had considered that he should not have done, and he had not failed to consider relevant evidence.
6. Permission to appeal was refused on 27 April 2015, and so the appellant became appeal rights-exhausted shortly thereafter. By letter dated 7 December 2015, the appellant informed Immigration Enforcement that she was now in the process of seeking a judicial review.
7. The core bundle contains a Statement of Grounds for a proposed judicial review claim, ostensibly settled by the appellant as a litigant in person. In the Statement of Grounds, she said that the only family members she had left in Pakistan were her father, who was elderly and frail, and her brother. They lived in Peshawar, which was a troubled area rife with political and military conflict involving the Taliban. She had not lived in that region since her marriage, and she had no wish to do so, as it was dangerous. She and her late husband had lived in Kotli. But now that he had died, she had to leave their accommodation in Kotli because she had no income with

which to pay the rent. Her late husband's friends in the UK were willing to accommodate and support her in the UK, so that she would have no recourse to public funds.

8. The appellant did not proceed with a claim for a judicial review, and instead claimed asylum on 27 July 2016.
9. Her claim was that, in mid-2014, her father and brother had started pressurising her over the telephone to return to Pakistan with her children so that she could be married off to an elderly man for her family's financial benefit. She was told that her eldest daughter would also be married, and her other children would be put out to work. She refused to return to Pakistan, and when her father and brother persisted, she ceased telephone contact with them. However, between 2014 and May 2016 her father had sent her several letters pressurising her to return to Pakistan. She feared that, on return to Pakistan, she would be forced to marry against her will, or that her father and brother might seek to harm her if she refused to re-marry. In support of her asylum claim, the appellant relied on two letters from her father: one dated 2 March 2016; the other dated 1 May 2016.
10. On 13 January 2017, the respondent gave her reasons for refusing to recognise the appellant as a refugee. Her claim was not credible or consistent. She claimed to have received threatening letters from her father, but she had not been consistent about when the letters were received. She had also been vague about exactly how many letters had been received. It was also not credible that the reason why she could not produce more than two letters was because she had allowed her children to play with the other letters. She had claimed that her father would kill her if she returned to Pakistan, or that he would kill her children. But when asked if anyone in the family had actually threatened her or her children, she said they had not.
11. It was noted that she had made representations to the Home Office dated 7 December 2015. In these, she had submitted detailed grounds about her reasons for wishing to remain in the UK. Her claim at that time was that she had no family support in Pakistan. She said that she did not want to return to her home region of Peshawar due to general instability in the region. If she had genuinely feared persecution at the hands of her brother and father since 2014, it was reasonable to expect her to have stated this in her grounds of December 2015. The fact that she had relied on a contradictory set of claimed circumstances, and then only raised her current claim when all other avenues failed, indicated that her current claim of familial persecution was a last-minute fabrication to avoid removal from the UK.
12. The respondent commented on the letters dated 2 March 2016 and 1 May 2016. They were written on plain, unmarked paper and could have been written by any person at any time in Pakistan and posted to her. The March 2016 letter referred to several previous letters, but she had not supplied these. At the start and at the end of the May 2016 letter, the

author has expressed his wish for her continued wellbeing. In that regard, the letter did not read as a culmination of several acrimonious letters demanding her return so that she might be persecuted. No threats were made against her in either of the two letters. The tone and content of the letters was inconsistent with her claim that her life was under threat.

The Hearing Before, and the Decision of, the First-Tier Tribunal

13. At the hearing before Judge Manyarara, the appellant was represented by Mr Islam of City Link Solicitors. Ms Chopra of Counsel appeared on behalf of the respondent. At paragraph [6] of her subsequent decision, the Judge noted that the documents before her included a bundle provided by the appellant's representatives on the morning of the hearing, consisting of 199 pages. There was also a witness statement in the name of the appellant's father-in-law. The Judge received oral evidence from the appellant and her father-in-law, and she expressly noted oral evidence from the appellant that she was suffering from depression.
14. At paragraphs [51] following, the Judge gave her reasons for finding that the appellant was not at risk of a forced marriage at the hands of her father and brother, and that she would not be a lone woman on return to Pakistan. The Judge repeated an earlier finding that the appellant had a supportive family of in-laws who retained links to Pakistan. She held that the appellant was very much part of their family; and she did not accept that the appellant would be left to fend for herself in Pakistan.
15. The Judge found at paragraph [69] that there was no suggestion that those who remained in Pakistan on her husband's side of the family would not be willing to assist her.
16. The Judge addressed a private life claim at paragraphs [76]-[84]. The Judge noted the appellant's evidence that she was suffering from depression. She took into account the fact that she was not receiving any treatment for a mental health condition, and was not receiving any specialist input, which one would expect (she said) if her functional limitations were as a result of any mental health problems of the nature and level described. There was no indication of any referral to psychotherapy, professional help from Social Services, a Key Worker, a Support Worker, a community nurse or mental health team, which would suggest a more serious mental health condition. This suggested to her that any mental health condition was mild and would not significantly affect the appellant's functional abilities.
17. The Judge went on to dismiss the appeal on all grounds raised.

The Application for Permission to Appeal

18. City Link Solicitors Ltd settled lengthy grounds of appeal to the Upper

Tribunal. They raised a number of disparate grounds, the first of which related to an adjournment application which had been made orally at the hearing. They pleaded that the Judge had refused to grant such an adjournment, and had failed to make any finding in her decision. They pleaded that her refusal to accede to the adjournment request was erroneous in law, citing **Nwaigwe (Adjournment: fairness) [2014] UKUT 00418 (IAC)**.

19. The appellant had sought to present further evidence to the Tribunal in support of her appeal, "*which [was] not available at the date of the hearing, including evidence of her risk in Pakistan and evidence of her mental health condition.*" Although the Judge inspected the appellant's medication at the hearing - without making a finding in her determination - she had failed to grant an adjournment and she had failed to give any reasons for her refusal. So her decision was unfair.

The Reasons for Granting Permission to Appeal

20. On 7 August 2017, First-tier Tribunal Judge Grant-Hutchison granted permission to appeal for the following reasons:

It is an arguable error of law that the Judge misdirected herself in not giving any reasons why she refused the adjournment request to allow the appellant more time to bring evidence, including mental health evidence. Reference was made to the case of *Nwaigwe (Adjournment: fairness) [2014] UKUT 00418 (IAC)* where fairness is the test to be applied. Had the request been granted, it is arguable that it may have made a material difference to the outcome or to the fairness of the proceedings.

The Rule 24 Response

21. On 18 August 2017, a member of the Specialist Appeals Team settled the Rule 24 response opposing the appeal. The response was sent out on the same day. He pleaded that it was of note that no evidence or witness statement had been served to evidence that an adjournment application was in fact made on the day of the hearing. Equally, the grounds failed to identify whether "*the missing evidence*" that was subject of the alleged application in March had now been obtained, or whether the said evidence materially affected the appeal. It was for the appellant to evidence that the application was made; the basis upon which the application was pursued; and the prejudice suffered.

The Hearing in the Upper Tribunal

22. At the hearing before me to determine whether an error of law was made out, Mr Melvin applied at the outset of the hearing for an adjournment. Mr Islam had passed away, and he had been instructed to represent the appellant last week. He had been instructed via an intermediary, not by City Link Solicitors Ltd. The appellant and her father-in-law were in attendance, but it was difficult for him to get instructions from them without the assistance of an interpreter.
23. I refused to grant an adjournment, having regard *inter alia* to the history of

the claim and the fact that the appellant had shown herself in the past to be a competent litigant in person. I understood from Mr Melvin that Mr Islam had not passed away recently (i.e. in the last few weeks), and I considered that objectively there had been ample time for the appellant to instruct someone else to appear on her behalf; and for the new representative to take instructions from her on "*the missing evidence*" that was the subject of the adjournment application in March. I took into account that no adjournment request had been made in advance of the hearing. In addition, as I informed the representatives, I was able to ascertain from the Judge's manuscript record of proceedings that she had taken a contemporaneous note of the adjournment application. Accordingly, I was satisfied that proceeding with the error of law hearing would not be unfair.

24. On the resumption of the hearing after a short adjournment, Mr Melvin submitted that the Judge's failure to record the adjournment application in her decision, or to record her reasons for refusing it, was fatal. He submitted that it had to be unfair for the adjournment request not to be mentioned at all.

Discussion

25. I accept that Mr Islam made an application for an adjournment at the outset of the hearing before Judge Manyarara. So, the first issue raised in the Rule 24 response falls away. I am not, however, persuaded that the Judge did not give reasons for refusing the adjournment request at the hearing, nor is it clearly asserted in the grounds of appeal that she did not do so. The complaint in the grounds of appeal is essentially three-fold: (a) the Judge did not mention the adjournment request in her determination; (b) she did not give in the determination her reasons for not acceding to the adjournment request; and (c) her refusal of the adjournment request deprived the appellant of a fair hearing.
26. The Judge erred in not referring to the adjournment request, and in not stating in her promulgated decision her reason or reasons for refusing it. But, I do not consider that these errors in themselves undermine the fairness of the proceedings.
27. It is apparent from the Judge's manuscript note that Mr Islam began by apologising for the late service of the appellant's bundle, and then announced that further documents were awaited. These were letters from the appellant's father, which were in the process of being translated. He also made reference to two witnesses, but it is not clear whether this was said in parenthesis (he went on to call two witnesses) or whether he was saying there were two additional witnesses whom he would wish to call to give evidence on a subsequent occasion. If the latter, there is no indication as to who they were, or what they were going to say. The grounds of appeal refer to additional documents, not witnesses, and so I consider that if calling evidence from two additional witnesses was in contemplation at the outset of the hearing, it was no longer in contemplation by the time that the grounds of appeal were settled.

28. There is no reference in the judge's note of the adjournment application to the appellant suffering from depression, and no suggestion of an adjournment being sought to obtain medical evidence pertaining to the appellant's mental health.
29. Counsel for the respondent opposed the application, submitting that the appellant and/or her representatives had had ample time to prepare for the hearing, and that the adjournment request came far too late.
30. Although the Judge does not record her ruling, I infer that at the very least she indicated to the parties that she was refusing the adjournment request for the reasons given by Counsel for the respondent.
31. The question which remains is whether the refusal of the adjournment request deprived the appellant of a fair hearing. The burden rests with the appellant to make out a case that the refusal of an adjournment was unfair.
32. I consider that the grounds fall very far short of disclosing a prima facie case of unfairness. Firstly, with regard to "*evidence of her mental health condition*", I am not persuaded that an adjournment request was made. But even if it was, the grounds fail to specify: (a) what the appellant's asserted mental health condition was; and (b) the evidence about her mental health condition which was not available at the date of the hearing, but which has become available subsequently.
33. The bundle of documents served on the day of the hearing included a witness statement from the appellant, which was signed by her on 14 March 2017. The witness statement contained no mention of her suffering from any mental health problem. As is recorded in the decision of the Judge, the appellant gave oral evidence of suffering from depression. However, no case on the significance of the appellant having depression appears to have been advanced at the hearing, and it is certainly absent from the grounds of appeal. I also note that there is no error of law challenge to the findings made by the Judge at paragraph [82] on the appellant's evidence that she was suffering from depression. On the available evidence, the Judge held that any mental health condition that the appellant suffered from was mild and would not significantly affect her functional abilities. It is not pleaded that the appellant's mental health condition was in fact significantly worse than that apprehended by the Judge, and that the effect of the refusal of the adjournment was to deprive her of the opportunity to produce evidence of this. In the absence of such a pleaded case, it is not arguable that, had the alleged request been granted, it might have made a material difference to the outcome or the fairness of the proceedings.
34. The other category of evidence which is said to have been not available at the date of the hearing was evidence of the appellant's risk in Pakistan. Again, there is the failure to be specific about the nature of such evidence. In the absence of a pleaded case as to the precise nature of the evidence in question, and confirmation of its existence, the grounds do not disclose

a prima facie or arguable case that - had the request for an adjournment been granted - it might have made a material difference to the outcome or the fairness of the proceedings.

35. Moreover, if there was in existence at the date of the hearing untranslated letters from the appellant's father, or any other material bearing upon the issue of risk on return upon which the appellant wished to rely, it is reasonable to expect such material to have been identified and produced by now. The appellant received a formal education in Pakistan. As the respondent observed at paragraph [43] of the refusal decision, she had proved herself to be an articulate person who was well able to make her case to the authorities, as demonstrated by her own statement of grounds to the Home Office on 7 December 2015. Mr Islam's request for an adjournment would have been made on the appellant's instructions. She would have known if she had found or received further letters from her father. Against this background, the sad passing of Mr Islam does not give rise to a reasonable excuse for the non-production of any further material encompassed by the adjournment request.

Notice of Decision

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.

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 19 October 2017

Judge Monson

Deputy Upper Tribunal Judge