



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/05462/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 6 June 2017**

**Decision and Reasons
Promulgated
On 19 June 2017**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MD RABIN MIA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a Bangladesh national born on 14th July 1988. He was granted a Tier 4 (General) Student visa on 8th March 2011 and arrived in the United Kingdom in March 2011. His sponsor's licence was cancelled, he made no further application and his leave expired on 20th December 2012. He was encountered on 9th January 2016 working at the Blue Ginger restaurant. He gave a false name and date of birth and said he had leave to remain until December 2016 as he was studying. Checks revealed his true identity and immigration history. He asserted that he had submitted

a further application but in fact he had not. He then claimed asylum on 14th January 2014 advancing that he was involved in BNP student politics, was afraid of the ruling Awami party and that the authorities had come looking for him in 2012, 2013 and 2015. The Secretary of State rejected his claim in part because of the delay in claiming asylum.

2. The appellant appealed and First-tier Tribunal Judge L Murray dismissed his appeal. The appellant made an application for permission to appeal. It is correct to state that the appellant's application for permission to appeal confirmed that the tribunal had dismissed his appeal against refusal of his asylum claim and on the day of the hearing he could not appear before the court because of physical injury and that was why he could not show all his evidence to the tribunal.
3. The appellant was granted permission to appeal against the decision of the First Tier Tribunal Judge L Murray in the following terms

"the judge made an arguable error of law but for which the outcome of the appeal might have been different. By proceeding with the hearing in the absence of the appellant the judge effectively denied the appellant an opportunity to present evidence or argue his case. The issue raised in the application permission was one of fairness. The judge presumed – the evidential foundation for his presumption was not stated – that the appellant would be able to forward medical documents so as to confirm the injuries which he had sustained stop if the appellant was in hospital having suffered fractures to his legs and to his backbone it is arguable that he would not have been able to forward medical documents. It was in any case a matter for conjecture whether medical documents confirming the nature and extent of his injuries were in existence although the judge presumed, without evidence, that such documents were in existence. The judge arguably failed to have regard to the duty of fairness and had he done so it is arguable that he would have granted the appellant's most recent request for an adjournment. The application for permission is granted".

Conclusions

4. At the hearing before me the appellant failed to attend. I note that there was notification to him from the Upper Tribunal of the date, time and venue of the hearing to the address that he had used in his application for permission to appeal. I was satisfied that the appellant had been indeed notified of the hearing before the Upper Tribunal. Therefore in the appeal before me the appellant did not attend, had not send in medical documentation in connection with his application for permission to appeal and did not send any medical documentation in to the Upper tribunal either in support of his previous assertions of fractured legs and a backbone or in connection with his absence from this hearing. I considered that the matter should, in fairness, proceed.
5. Mr Kotas submitted that the appellant had not submitted any medical evidence with his grounds for permission to appeal and he had confirmed his address as being the one used by the Tribunal, on 19 December 2016.

The clerk for the Upper Tribunal confirmed that there had been no communication from the appellant in relation to the hearing before me.

6. An inspection of the file reveals the following.
7. The appellant in a 'reply notice' received on 20 October 2016 by the First-tier Tribunal indicated that he wished to obtain copies of case papers that had been filed against him in Bangladesh and charge sheets. A prehearing review was listed for 3 November 2016 and the appellant was advised that the appeal would proceed to a full hearing on 17 November 2016. On 1 November 2016 the appellant advised that he had not been able to gather all of the documents and would not be able to send his documents on time and he requested that his prehearing date be postponed. His application for an adjournment of the prehearing review was refused and he was notified that he should submitted documents in line with standard directions and no later than five working days of the full hearing. He clearly did not do that.
8. Nonetheless on 4 November 2016 the Tribunal sent the appellant a direction that he should submit his further documentation no later than the five working days before the full hearing. On 4 November 2016 the appellant was sent notice of the hearing date that being 17 November 2016.
9. On 16 November a letter (purported to be in the handwriting of the friend of the appellant but in the same handwriting as other letters sent by the appellant) was received by the tribunal stating that the appellant had been involved in a car accident and he was seriously injured. That was one day prior to the hearing. The tribunal sent by special delivery a letter dated 16 November 2016 refusing the adjournment noting that the appellant was in breach of directions having failed to lodge his bundle of evidence, the appellant had been refused an adjournment previously and the application was not accompanied by medical evidence even though the appellant was said to be in hospital and an inpatient so that obtaining the same would appear to be straightforward.
10. On the day of the hearing, that is 17 November 2016 at 11.03 the tribunal received a fax from the appellant stating that he could not be present because he had an accident '*the day before yesterday*' and '*both his legs got fractured and his backbone as well*'. He asked for his hearing to be postponed and that he be allocated a new date. He asserted that this letter was sent from his hospital bed.
11. At paragraphs 10 and 11 of the first Tier Tribunal decision the First-tier Tribunal Judge recorded as follows

"the appellant did not attend the hearing. The tribunal had received a letter from the appellant on 16 November 2016 purportedly written by a friend in which it was claimed that the appellant was involved in a car accident on the date of writing (the letter is undated). The letter states that the appellant is seriously injured and his legs had been fractured and backbone as well. An adjournment was requested. The application was

refused by the tribunal as the appellant was in breach of directions having failed to lodge his bundle of evidence”.

- 12.** As can be seen from the inspection of the file in fact the adjournment had been made for numerous reasons not least that the appellant had failed to provide any medical evidence.

- 13.** The judge proceeded

“he had been refused an adjournment previously and the application was not accompanied by medical evidence. He was said to be an inpatient so the obtaining of the same should have been straightforward. Further, the application was said not to be written by the appellant but was in the same hand as a previous application to adjourn made by the appellant in person stop the refusal of an adjournment was sent by special delivery on 16 November 2016”

- 14.** The first-tier Tribunal judge refusing the adjournment, had merely noted the previous history on the file and at paragraph 11 recorded further as follows

- 15.** Although the relevant test is simply fairness and the judge referred to the ‘overriding objective’ and that in itself encompasses consideration of fairness. The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 confirms at Rule 2 (1)

‘The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly’.

- 16.** It is evident that the judge was at pains to consider the background and history of the previous adjournment requests which had been refused. I find that the judge did implicitly, in effect, apply the test of fairness. The judge was cognisant that a friend had been assisting the appellant and had written had written into the tribunal and was aware of his claimed predicament. The appellant had had ample opportunity to put forward his documentation. The decision letter of the Secretary of State refusing his asylum claim was dated 12 May 2016. The appellant had had ample time to submit evidence and time and opportunity to submit medical evidence. As the judge noted the appellant claimed to be in hospital, he had access to a fax machine, and as he was being clearly assisted by a friend there was no reason as to why he could not submit medical documentation.

- 17.** The judge assessed the evidence holistically on the papers before him and gave a myriad of reasons for refusing the appeal. The appellant has now had over six months to produce medical evidence and has failed to do so. He was clearly aware at the date of the hearing before the first-tier Tribunal and that he was expected to produce medical documentation, not least because of the formal refusal by the tribunal of his adjournment both prior to the date of the hearing and on the date of the hearing in connection with the lack of medical evidence.

- 18.** In the circumstances the judge was entitled to take the approach he did and to proceed with the hearing for the reasons he gave and in the

interests of the overriding objective. Fairness must also be accorded to the opposing party and the tribunal must consider the interests of justice. Nothing in this determination contravenes the principal in **Nwaigwe (adjournment: fairness)** [2014] UKUT 00418 (IAC) and there is no error of law in the decision of Judge Murray. That decision shall stand.

Signed
2017

Helen Rimington

Date 16th June

Upper Tribunal Judge Rimington