



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

Appeal Number: PA/01140/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 19 October 2018**

**Decision & Reasons
Promulgated
On 13 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

**H M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Rakhim Jonova, Sterling Lawyers Ltd
For the Respondent: Ms Z Kiss, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge O'Brien dismissing her appeal against the respondent's decision to refuse her asylum and leave to remain on human rights grounds.
2. The appellant claimed asylum on 30 June 2017. The basis of her claim was that she would be killed by a former employee who had murdered her husband in 2000 and was threatening to take revenge against her for his

subsequent imprisonment. The respondent refused the appellant's claim on 9 January 2018.

3. The judge set out in brief the reasons why the respondent refused the appellant's application. The respondent accepted that the appellant was a Ukraine national; however, her account of events in Ukraine had been rejected. She had given two inconsistent dates for [AF]'s release and visit to her shop. She had given two differing accounts of their conversation, of who else was present in the shop and who had contacted the police.
4. The appellant's account of her personal circumstances in Ukraine was inconsistent with her visa application in October 2006, when she claimed that she and her husband were lawyers, and her visa application in July 2011 when she claimed that she and her then spouse were economists. No evidence had been given of her business in Ukraine nor any explanation for these inconsistencies. The appellant had not provided any explanation for the location of her current spouse and provided no evidence from Ukraine to corroborate her account, save for a copy of a document purporting to be a court determination and a death certificate, neither of which were considered to be reliable documents by the respondent. A report submitted by the appellant from Professor Mark Galeotti dated 13 June 2014 did not advance her case.
5. Notwithstanding the appellant's claim to have travelled to the United Kingdom with the intention of escaping her problems in Ukraine, she had provided no explanation for failing to claim asylum on arrival in August 2011, or for another two years. Therefore, her credibility was undermined pursuant to Section 8(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.
6. Overall, it was not accepted that the appellant had a genuine fear of persecution. Further, there was no real risk of treatment on return which would breach Articles 2 or 3 ECHR. In any event, the appellant had not shown that she would have insufficient protection from the state or that she could not relocate internally; she was highly educated and experienced in business. The appellant did not therefore qualify for asylum or humanitarian protection.
7. The appellant did not qualify for leave to remain under Appendix FM or paragraph 276ADE of the Immigration Rules. There were no exceptional circumstances to justify a grant of leave to remain outside the Rules, even taking into account the best interests of her son, and she did not qualify for discretionary leave.
8. The appellant did not attend the hearing before the judge. She had instructed Mr Hussain to make an application on her behalf to adjourn the hearing. The judge said the application had been made by Sterling Lawyers in writing on 14 February 2018. The adjournment was requested on the grounds that the appellant's partner was in poor health following

recent chemotherapy and she had been unable to find anybody else to look after him, and that the Secretary of State had been asked to unite the cases of the appellant and her partner.

9. That application had been refused on 15 February 2018 on the basis that the appellant had had sufficient time to make arrangements for her partner's care and still had time to do so, and because the partner's claim might not require an appeal, and so the request to link the cases was premature.
10. Mr Hussain renewed the application before the judge. In addition to two medical letters dealing with the appellant's partner's diagnosis, he relied on a letter dated 19 February 2018 from Dr Tom Newsom-Davies. That letter reported that the partner received two-weekly chemotherapy which made it difficult for the couple to leave London, in case he suffered any adverse effects of the cancer or treatment, and that the appellant would struggle to be away from him.
11. The judge said Mr Hussain was not able to say whether the hearing day was a chemotherapy appointment. Mr Hussain said the appellant's son was at school but recognised that the son was of an age at which he could conceivably look after the partner. The judge also noted that no witness statement or bundle had been received from the appellant, for which Mr Hussain was unable to provide an explanation.
12. The judge was not persuaded that the appellant was unable to leave her partner in order to attend the hearing on 21 February 2018. No apparent consideration had been given to her son looking after the partner for the day. Indeed, it appeared that no steps had been taken by the appellant to prepare the case at all. Taking all matters into account, the judge held that it was not in the interests of justice to adjourn and refuse the application.
13. Following the judge's decision not to adjourn the hearing, Mr Hussain withdrew. The judge proceeded with the case in the absence of the appellant.
14. Ms Rushforth for the respondent below, relied on her submissions on the refusal letter. She submitted that the appellant had entered the UK on a visit visa on 7 August 2011 and had applied on expiry for leave to remain under Article 8 ECHR for herself and her son. The appellant had only raised asylum when her Article 8 application had been refused. Her credibility had been further undermined by the inconsistencies between the information given in the visa application and her asylum application. Ms Rushforth submitted that the appellant's account should be rejected. She went on to argue that even if the appellant's account were true, it did not engage the Refugee Convention. The appellant had failed to demonstrate that she would have insufficiency of protection or that she would be unable to relocate internally in Ukraine. The appellant's son was

now over 18 and so it was unnecessary to consider his best interests, which would in any event be to return with his mother to Ukraine.

15. The judge dismissed the appellant's appeal in view of the inconsistencies in her accounts which he said undermined her credibility. He was unable to accept that the appellant's claim to be at risk on return to Ukraine was even reasonably likely to be true. Even if it were, he was not persuaded that the appellant would be inadequately protected by the authorities. He bore in mind in particular the appellant's own case that [AF] was prosecuted and sentenced for the killing of her husband. Alternatively, the judge had no grounds whatsoever to believe that the appellant would be unable reasonably and safely to relocate elsewhere in Ukraine.
16. The judge held that the appellant's son is now 18 years old. Even if he were obliged to consider his best interests, there was no reason to doubt that they would be served by his returning to Ukraine with the appellant.
17. Permission was granted on the basis that the judge arguably failed to properly consider whether the appeal could be justly determined in the appellant's absence, given that her credibility was a central issue. There was evidence that she could not leave her husband during periods of chemotherapy treatment and it was arguably unreasonable to expect her son - who attended school - to act as a surrogate carer in her absence.
18. Upper Tribunal Judge Grubb, who granted permission, said the judge was entitled to rely on the inconsistencies in the evidence in reaching his adverse credibility finding. However, if ground 1 in respect of the failure to adjourn the hearing was made out, then the decision as a whole could not stand. He granted permission to appeal on ground 1 only.
19. Ms Jonova argued that the judge erred in law in not adjourning the hearing because the appellant was the primary carer for her partner, who had lung cancer. The partner had chemotherapy twice a week. The appellant's 18-year old son could not attend to his needs. The hearing took place in Newport whilst the appellant resides in London. Her solicitors are also based in London. The appellant had not been able to give instructions to her lawyers in London because she would have had to arrange short-term care for her partner in order to do so. There had been a suggestion by the appellant's representative to the judge for the appeal be listed in London so that the appellant and her partner could attend the hearing. Ms Jonova accepted that this request was not in the decision and may have not been made to the judge.
20. Ms Jonova confirmed that the only witness statement we had for the appellant was dated 19 January 2012. There has not been an update of this witness statement in the six years prior to the hearing.
21. Ms Jonova relied on her skeleton argument. She said that this was an issue of fairness. The judge's decision was in error because the judge

failed to grant an adjournment to enable the appellant to attend the hearing and challenge the respondent's decision. She could not explain why there had been no witness statement from the appellant in response to the issues raised by the respondent in her Reasons for Refusal Letter. She relied on the case of **Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC)**, which held that the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing? The judge should take into account all material considerations and should not act irrationally.

22. Ms Kiss said that it was at today's hearing that she has had notification that the appellant had a new partner. There has been no response by the appellant to the respondent's refusal letter dated 1 January 2018. There had been no prior indication of her new partner at all.
23. Ms Kiss submitted that the judge did take care to ascertain what was happening to the medical care of the appellant's partner. At paragraph 18 he noted that Mr Hussain was not able to say whether the day of the hearing, was a chemotherapy appointment. Mr Hussain had said that the appellant's son was at school but recognised that the son was of an age which he could conceivably look after the partner. Ms Kiss questioned how the appellant's partner would have been able to travel with her if the hearing had been held in London.
24. Ms Jonova had said that the appellant's partner's case was at the Home Office awaiting a decision. Ms Kiss submitted that it would not have been possible for the appellant's decision to have been linked to a case that is awaiting a Home Office decision. Miss Kiss submitted that the judge was entitled to find that the request to link the case was premature.
25. Ms Kiss submitted that on the information that was before the judge and the inconsistencies highlighted by the Secretary of State, the judge's decision to dismiss the appellant's appeal for the reasons set out in paragraph 22 was reasonable.
26. I note from the death certificate submitted by Ms Rakhim Jonova that a Mr [IS] died on 10 June 2018 at Hillingdon Hospital. The informant was Ms [HM]. The death certificate said she was present at the death. Mr [S] died of end stage lung cancer.
27. I also note that it was at today's hearing that Ms Kiss learned that the appellant had a new partner.
28. I find that the judge did not err in law in his refusal to grant an adjournment. I find that the judge applied the test in **Nwaigwe**. The judge took into account all the material considerations. He noted that the application for an adjournment had been refused on 15 February 2018 on the basis that the appellant had had sufficient time to make arrangements for her partner's care. Mr Hussain was not able to say whether on the

date of the hearing was a chemotherapy appointment. Indeed, there has been no letter presented from the appellant on this matter. Mr Hussain said the appellant's son was at school and recognised that the son was of an age at which he could conceivably look after the partner. The judge also noted that no witness statement or bundle had been provided from the appellant, for which Mr Hussain was unable to provide an explanation. Indeed, I note that the last witness statement received from the appellant was in 2012, which was made in support of her asylum application in 2012. For six years now there has been no updated witness statement from the appellant in response to any of the matters raised by the Secretary of State in the Reasons for Refusal Letter. Indeed, there has been no witness statement from the appellant providing an explanation for her absence from the hearing.

29. I agree with the judge that the request to relink the cases was premature, given Ms Jonova's assertion that the appellant's partner's application for asylum had not yet been decided by the Secretary of State.
30. On the evidence that was before the judge, I find that the judge did not act unfairly in his decision to refuse to adjourn the hearing.
31. On the evidence that was before the judge, I find that his decision to dismiss the appellant's appeal discloses no error of law. The judge's decision shall stand.

Notice of Decision

The appellant's appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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: 5 November 2018

Deputy Upper Tribunal Judge Eshun