



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

Appeal Number: PA/07147/2018

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 14 November 2018**

**Promulgated  
On 03 December 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HANBURY**

**Between**

**F H  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Unrepresented, but Mr Hammatt advised and assisted the appellant at the hearing

For the Respondent: Ms Isherwood, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal from the decision of Judge of the First-tier Tribunal (FTT) M A Khan (the Immigration Judge).

**Background**

2. By way of background, the appellant is an Algerian national who was born on 4 May 1980. She applied originally for a one year visa but she overstayed her visa and she then returned to the UK again on 1 September 2003. She then overstayed a spouse visa that she was given and was arrested in September 2008. She then made an asylum claim which was refused on 16<sup>th</sup> May 2018 and a refusal letter was addressed to the appellant on that day notifying the appellant of her liability to removal from the UK. The appellant appealed that decision under Section 82 of the Nationality, Immigration and Asylum Act 2002 to the FTT.

### **The hearing before the FTT**

3. A notice of hearing was sent out in this case to the appellant's address in Barking on 2 July 2018, notifying her of the hearing on 6 July 2018 at Harmondsworth hearing centre. The appellant was notified that the case would be heard on that day and that no further directions would be issued. The notice of hearing also suggested that she should arrive at the hearing centre no later than fifteen minutes before the hearing. Previous directions had been sent out for the service of witness statements, paginated bundles and so forth. There was a notice of change of venue sent out on the same day and the solicitors then instructed, Messrs Montagues, notified the FTT on 3 July 2018 that they were no longer instructed on behalf of the appellant.
4. It seems that on 3 July 2018 new solicitors were instructed, Sabz Solicitors LLP, who are situated in Manchester. Sabz said it had only recently been instructed in relation to the matter. They were instructed by their client that the previous representatives had failed to prepare a bundle or advise the client of the date of the hearing. The appellant had also produced a letter dated 8 June 2018 she which confirmed that the full hearing was to be heard on Friday, 6 July 2018 at 10am. However, Sabz represented that that it had detailed instructions from their client that she requires an assessment from an independent psychologist to assess the impact of contracting HIV from a previous partner. The appellant has also provided a letter dated 5 April 2018 from Dr Christopher Wood, which said that if, for whatever reason, the appellant has to stop her medication she would rapidly become vulnerable to life-threatening conditions. Sabz therefore thought that further evidence would be needed and they requested an adjournment in that letter.
5. A further fax was sent on 5 July 2018 (the day before the hearing) at 16.35 requesting a further adjournment stating that their client was unwell and would not be able to attend the hearing "tomorrow". The instructions that had been given to Sabz were that the appellant had to see an emergency doctor that night who would be able to provide documentary evidence before the FTT. They were also in contact with Mr Hammatt, who has attended the hearing before the UT, as I have stated, in an effort to advise and assist the appellant in the presentation of her case. It appears that Sabz no longer represent the appellant.

6. A further letter was sent Sabz on 6 July 2018 stating that, further to a telephone conversation that morning, they had not been able to reach the appellant but they had spoken to Mr Hammatt, who had informed them that the appellant was unable to visit her GP or an emergency doctor. His instructions were that she would contact her GP on that day and use her best endeavours to obtain a "not fit to attend" note or letter. This was faxed through to the Tribunal at 11.26 on the day, notifying the FTT and the Immigration Judge that the appellant had insufficient time to obtain evidence as to her medical condition.
7. The UT is now provided with evidence from the Emergency Department of East Suffolk and North Essex NHS Foundation Trust to the effect that the appellant was admitted at 19.50 hours on 6 July 2018, the day of the hearing. Mr Hammatt has described the appellant as his "partner", although they live apart in respectively, Hertfordshire and Clacton-on-Sea. It seems that that the appellant was an emergency admission because there is reference to a "111 contact", and there is another letter dated 10 July 2018 from Sabz Solicitors to the Tribunal, requesting an adjournment of the hearing and notifying the Immigration Judge at the hearing that the reason for the adjournment was that the appellant had attended the hospital on 6 July, having been unable to secure an appointment with her GP. It is stated that the appellant was unable to get out of bed due to her ill-health and had to be admitted to the Emergency Department of East Suffolk and North Essex Hospital that evening. As a BZ invited the Immigration Judge to consider that evidence when determining whether the hearing should be re-listed to allow the appellant a fair opportunity to present her case.

### **Discussion**

8. Unfortunately, there is no evidence that that the last-mentioned document came to the attention of the Immigration Judge before he made his decision, which was promulgated on 21 August 2018. It was only faxed through, according to the fax transmission report, at 16.29 on 11 July 2018 and the Immigration Judge had heard the case on 6 July 2018. In fact, the case was not sent for promulgation until 19 August 2018 but it is not unusual for documents that are submitted following a hearing not to reach the judge to whom they are directed for some time. It may well be, indeed, it is almost certainly the case here, that the Immigration Judge did not see a copy of the fax dated 11 July 2018 before he reached his decision.
9. The problems with this case have been compounded by poor legal representation and a lack of familiarity with tribunal procedures on the part of the appellant.

### **Conclusion**

10. Having regard to the need to apply the overriding objective of trying cases justly and at proportionate expense and the need to act fairly to both parties in this case, I have decided that it would have been in the interests

of justice to have adjourned the case if the Immigration Judge had been aware of the true facts. It is unfortunate that nobody placed the true facts before him as to the extent of the appellant's medical condition but those facts are now known. In particular, the appellant did in fact have a potential emergency condition and she was in fact unable to attend the hearing on 6 July 2018.

11. In the interests of justice, the appellant ought to be given a proper opportunity to present her case. Obviously, it is incumbent upon her to prepare for her case and that would include obtaining on her own behalf and at her own expense an up-to-date indication of her medical condition if it is relevant to the outcome of her appeal.
12. Due to an error of procedure, the hearing before the FTT proceeded in the appellant's absence and that may have been unfair as she was not given an opportunity to present her case. It is necessary to remit this matter back to the FTT. She should not take from this that her appeal is ultimately likely to be successful.
13. The appeal to the UT is allowed to the extent it is necessary to set aside the decision of the FTT. There will have to be a *de novo* hearing. That hearing can be before any judge of the FTT including the Immigration Judge, because there is no criticism of this Immigration Judge in the decision he reached.

### **Notice of Decision**

The appeal is allowed. The appeal is limited to the FTT.

Further directions will be sent out by the FTT.

And anonymity direction is made in this case by the FTT and I continue that anonymity direction.

### **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 27 November 2018

Deputy Upper Tribunal Judge Hanbury

The Immigration Judge made no fee award as no fees were payable in this case.

Signed

Date 27 November 2018

Deputy Upper Tribunal Judge Hanbury