



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/14247/2016

THE IMMIGRATION ACTS

Heard at Field House
On 7 June 2018

Decision & Reasons Promulgated
On 26 June 2018

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

SILVANA [M]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Gajjar, Counsel instructed by Malik & Malik Solicitors
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Albania who was born on 28 February 1991. Her application for asylum was refused by the respondent on 15 December 2016 and her appeal against that decision was dismissed by First-tier Tribunal Judge Bart-Stewart in a decision promulgated on 12 January 2018 following a hearing at Birmingham IAC Sheldon on 15 December 2017. The appellant now appeals against that decision, permission having been granted by First-tier Tribunal Judge O'Garro on 2 February 2018. When granting permission Judge O'Garro stated at paragraph 3 as follows:

“I will grant permission largely on the ground that the appellant who was unrepresented at the time and had explained that she was unwell, may have been deprived of a fair hearing when the judge decided to proceed with the appeal.”

2. Before me, on behalf of the appellant, Mr Gajjar effectively accepted that but for the procedural irregularity (on his case) in not adjourning the proceedings he could not (and certainly did not during the hearing) advance any further argument that there was any other error of law within the decision such that it should be set aside.
3. The facts can be summarised very briefly indeed, and are set out within Judge Bart-Stewart's decision. The appellant had arrived in the UK in December 2014 and was served shortly after with a notice of illegal entry; she claimed asylum the same day. That claim was refused on 12 January 2015 and the claim was certified as clearly unfounded under Section 94 of the Nationality, Immigration and Asylum Act 2002. It is said that there were some further applications made for judicial review and it is unclear whether or not that is so or whether or not anything is outstanding but it seems that her claim for asylum was renewed but on reconsideration it was refused on 15 December 2016 but not certified and it is against that decision that the appellant brought her appeal.
4. The details of her claim are that she says she fears her father and one of her brothers in Albania who are opposed to her relationship with her partner, Artur. They have fled Albania together. It is said that they could not approach the authorities for help because there were family members in the police force and it was feared that her brother and father would carry out their threats of killing her, Artur and their baby.
5. The claim was refused for a number of reasons. There were credibility problems and also it was argued that internal relocation was available to the couple. It was not accepted that the brother and father would have either the means or motive to locate her in a different part of Albania nor did she provide any reasonable explanation as to why she could not relocate. Neither she nor her partner had approached the police during the six years of their claimed relationship. Had there been a real risk of serious harm or persecution they would have sought assistance from the authorities (see paragraph 6 of the judge's decision).
6. The judge also set out the respondent's case that sufficiency of protection was considered to be available from the authorities in Albania from the background material.
7. At paragraph 8 the judge refers to submissions which had been made previously by Duncan Lewis Solicitors including a psychiatric report which made arguments that the appellant had not been able to present her account properly and effectively in her asylum interview and that she should be granted another one. It was also said that she had suffered domestic violence at the hands of her brother and father in Albania and that she was a vulnerable adult with a diagnosis of generalised anxiety disorder for which she required medical treatment and assistance which was provided by her partner. There were also, medical issues raised (see paragraphs 8 and 9).
8. The crux of this appeal concerns the matters that are set out from paragraphs 25 to 27 of the judge's decision. At paragraph 25 the judge notes that the appellant had attended the hearing, unrepresented, assisted by an Albanian interpreter. The appellant was asked why her solicitors were not representing her to which she is recorded as saying (at paragraph 25) that "she did not remember when she was last in

contact with them". When asked "to try to guess" apparently she said that "she saw them after the last hearing was postponed". The judge noted from the file that that last hearing had been in October, which the appellant had not attended (this will be referred to below) and it may be that that is the hearing that she referred to, although from later answers she gave that is unlikely. Apparently the appellant also said that "she had come to court but was not feeling well" which again does not appear to be what had in fact happened, as the judge remarked because again at paragraph 25, the judge notes that "I said that according to the file no one turned up at all", to which the appellant then said that "she did not know which hearing she attended". She had come with her partner. This matter appeared to be unresolved at the hearing. It appears that the appellant had attended the hearing before Judge Bart-Stewart with a partner and the children but because the older child was distracted the judge asked the father to stay in the waiting area with the children.

9. Particular emphasis was placed by the appellant's Counsel on what is then said at paragraph 26, which is that, "I then asked the appellant if she was ready for the case to go ahead. She said she was not. She said she was not feeling well". It is the appellant's case (and this is as already noted above the only substantive argument advanced before the Tribunal) that there was a procedural irregularity in the judge still going ahead with the hearing. However the judge goes on to record that she asked the appellant what was wrong with her to which the appellant had responded that she had been attacked and had asked for help but no one had helped, she had terrible headaches, back pains and her eyes were aching. When asked the date of the attack she had said it was "almost four months". The judge noted that representatives had submitted a printout of her GP records in which there had been no mention of an attack to which she then replied "that her representatives had withdrawn in July". This is of course inconsistent with the case which had apparently been advanced that she has last seen her solicitors after the last hearing, but this would make sense if the hearing to which she had been referring was the hearing in June (to which also reference will be made below) because this would be just after that hearing, and it is also the last hearing which on the record it seems the appellant attended. The judge then went on to note that "I considered and said that this was sufficient time to get new representatives".
10. At paragraph 27 the judge noted that "I decided and informed the appellant that I would proceed with the hearing. I did not think it was necessary or in the interests of justice to adjourn". There was then a hearing on the merits and as already stated there is no substantive challenge to the findings that are then made; it appears to be accepted that but for the procedural irregularity asserted in not adjourning the hearing, on the basis of the material before her the judge's findings were open to her and are adequately reasoned.
11. One is always hesitant before condoning a hearing with regard to a protection claim at which an unrepresented claimant says that he or she is unwell and where there is nobody representing him or her to provide such assistance as may be necessary. However, it does not follow that in cases where such a person claims to be unwell an adjournment must be allowed. The judge has to make a decision in accordance with the overriding objective and has to consider whether it is in the interests of justice for

the hearing to go ahead. In this case the procedural history is important, and this was set out in argument concisely and accurately by Mr Wilding. The case had apparently first been listed for hearing before the First-tier Tribunal on 30 January 2017. On 24 January, that is six days before, Duncan Lewis Solicitors had applied for an adjournment on behalf of the appellant and according to the directions given by the Tribunal the appellant had requested an adjournment of the substantive hearing which had been set for 30 January 2017 in order to obtain an expert report and to allow further time to secure new representation. The Tribunal had made three directions. First, within 28 days the appellant was to confirm that funding was in place for an expert report; secondly, the appellant was required to give the name of the expert; and thirdly the appellant was required to notify the Tribunal as to when that report should be obtained.

12. None of these directions were complied with and the appeal was then listed for hearing before First-tier Tribunal Judge Phull, sitting in Birmingham. At that hearing (which was listed as a full substantive hearing) the appellant attended with her representative from Sultan Lloyd Solicitors, and another adjournment request was made on the basis that it was necessary to obtain medical evidence with regard to the appellant's fitness to return, and also to have updates on previous medical reports which had been submitted. Judge Phull granted this adjournment.
13. The next hearing was a CMR on 6 October 2017 which was listed by Designated First-tier Tribunal Judge McCarthy. As already noted above the appellant did not attend that hearing nor did any representative on her behalf. The direction was given that the appeal was to be listed after two months and so it was that the hearing was then re-listed for December 2017 before Judge Bart-Stewart.
14. On instructions before this Tribunal today, Mr Gajjar told the Tribunal that the appellant's case was that she had expected her solicitors to attend the hearing in December. However, this is clearly inconsistent with what she told the judge at that hearing. Her case then had been that her solicitors had withdrawn back in July. In light of the procedural history of this case, this is very much not an incidence of a claimant in a protection claim being let down by their solicitors at the last moment without notice. This is an appeal which has been listed on several previous occasions and where the appellant has failed to take any reasonable or realistic steps to comply with directions which had been given or obtain representation in time for the hearing. Furthermore, although she claimed not to be well, she was able to answer questions (albeit that she did not know the answer to some of them) and it is apparent that Judge Bart-Stewart was well aware of the difficulties that this appellant would have and expressed concern as to her ability to put her case adequately during the hearing. However, the judge was entitled to consider that it was in the interests of justice to proceed with the hearing as she did, and as is clear from paragraph 27 and onwards she did her best to ensure that the appellant was able to understand the proceedings and the questions which she was being asked. As already indicated the findings she made were not findings which would have been subject to challenge but for the one substantive argument in this appeal, which is that the hearing should have been adjourned.

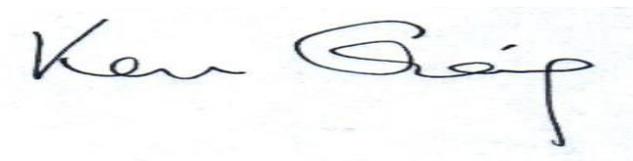
15. There is one other aspect of this case which should be mentioned, although it is of limited (but not no) relevance and that is that the appellant's partner's claim for asylum which was founded on similar reasons was refused and his appeal was apparently dismissed although at paragraph 28 the appellant is recorded as saying she did not know that it had been dismissed. Apparently he had appealed the decision refusing his appeal although the appellant had not.
16. So the situation is that this was an appellant with what appeared to be an extremely weak claim indeed who had had ample opportunity to get such representation as she might need and/or further medical evidence who had simply not done so and who was not actually asking for an adjournment but about whom it is now argued on the fourth occasion the appeal was before the Tribunal the judge should have on her own volition adjourned the hearing. In these circumstances the most likely outcome would have been that the hearing would then have been re-listed for another occasion when this procedure would have been repeated.
17. In these circumstances in the judgment of this Tribunal Judge Bart-Stewart did everything that she was obliged to do. Even though an application for an adjournment had not been made she considered whether it was appropriate to grant one but her decision that it was not is adequately reasoned and was a sustainable decision. As there is no other basis upon which her findings can be challenged, there is no arguable basis upon which her decision should be set aside and I accordingly make the following decision:

Notice of Decision

There being no material error of law in the decision of First-tier Tribunal Judge Bart-Stewart (and in particular there being no procedural irregularity in her decision to proceed with the hearing even though the appellant had been unrepresented) the appeal of the appellant is dismissed and Judge Bart-Stewart's decision, dismissing the appellant's appeal against the respondent's decision, is affirmed.

No anonymity direction is made.

Signed:

A handwritten signature in black ink, appearing to read "Ken Craig". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Upper Tribunal Judge Craig

Dated: 25 June 2018