



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/00723/2018

THE IMMIGRATION ACTS

Heard at Field House
On 13 February 2019

Decision & Reasons Promulgated
On 01 March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

AHMED EMRAN SHAFI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hossain, a legal representative

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

DECISION AND REASONS

Introduction and background

1. This is an appeal by the appellant against the decision of the First-tier Tribunal to dismiss his appeal against the respondent's decision to refuse him further leave to remain based on his relationship with his wife, [SH]. The application was made on 14 September 2017 but refused in November 2017.

2. The appellant appealed the Secretary of State's decision to the First-tier Tribunal on 15 December 2017, but he failed to pay the correct fee. Payment of that fee was requested and, eventually, was forthcoming. A notice of hearing was sent out on 16 March 2018. The directions required the appellant to send any documents he relied on to the First-tier Tribunal and serve those documents on any other party, identifying essential passages. Copies of documents had to be translated, where necessary. He was informed that it was important that they were available, as the respondent would review the evidence "you submit before the hearing and this could result in the decision being reversed in your favour". All documents relied on had to be sent to the Tribunal itself.
3. Judge of First-tier Tribunal Isaacs (the judge) decided to dismiss the appellant's appeal having refused an adjournment application. That refusal is the principal basis for the present appeal.
4. The appellant was granted permission to appeal to the Upper Tribunal by Upper Tribunal Judge Kekić on 31 December 2018. Although all grounds were described as "arguable", Judge Kekić particularly drew attention to the fact that there was an application for an adjournment before the First-tier Tribunal because the appellant's representatives had ceased to act for him ten days prior to the hearing. Judge Kekić suggested that the appellant may not have had an opportunity to present all his evidence before the First-tier Tribunal and thus the decision of that tribunal might have been unfair. Indeed, he still had certain documents, it had been claimed, which had not been considered.

The hearing before the Upper Tribunal

5. Mr Hossain expanded on the appellant's grounds of appeal. He suggested that there were documents in the appellant's former solicitor's file, including a draft witness statement, which had not been provided to the First-tier Tribunal. He said that there were also documents which confirmed his client's cohabitation with his wife. However, Mr Hossain, was unable to provide any further details of those documents. The grounds of appeal in support of the appeal before the Upper Tribunal point out that the appellant was represented in the appeal proceedings before the First -tier Tribunal (Chancery Solicitors) but wished to instruct another firm. However, unfortunately, the new firm demanded £3,000 before they would act. On that basis, the appellant chose to make various applications to adjourn the appeal, but those applications were unsuccessful.
6. It seems that the appellant disputed a bill from Chancery Solicitors, his former solicitors. That firm sent a fax to the Tribunal on 13 September 2018 notifying it that the appellant had withdrawn his instructions. The appellant sent a further email to the First -tier Tribunal in the early hours of 18 September 2018 stating that the appellant was unable to pay a substantial fee to instruct new solicitors at short notice. He also claimed to suffer from chronic migraine due to an error by the court. When that application was refused on 19 September 2018, the notice of refusal was mistakenly stated to be issued on "19 July" rather than 19 September-the correct date.

However, it is unlikely anyone was misled by that mistake, because it referred to the hearing on 20 September 2018. Mr Hossain explained that the appellant renewed the adjournment application before the First-tier Tribunal at the hearing, but the application was refused, and the appeal proceeded without representation. Mr Hossain submitted that had the adjournment request not been refused, material evidence might have been brought forward which could have been considered by the judge. Mr Hossain also sought to go behind the findings of the judge and say that they were not findings that he was able to properly come to because he had only a partial view of the evidence. The appellant's wife had not attended to give evidence and the judge did not have a witness statement from the appellant. Nor did he did not have a full copy of the interview.

Discussion of the merits of the appeal

7. I am not satisfied that those grounds carry any weight. First, dealing with the adjournment, it does seem to me that the reference to "19 July 2018" in paragraph 7 was immaterial. What the judge was really saying was that the appellant had from 13 September 2018 to instruct new solicitors. It seems from the grounds before the Upper Tribunal that a different firm of solicitors than the previous firm agreed to act but required funding to be in place before doing so. I am not satisfied that any material document would be subject to a solicitor's lien and I have seen no confirmation from the firm concerned. Nor was it suggested that any lien operated before the judge. If Mr Hossain's assertions are correct, it would mean that the former solicitors had refused to disclose those documents to his firm for several months. I have not been referred to a single document which supports such an assertion. Clearly, if, as now appears, Mr Hossain can act he would have been able to give the appropriate solicitor's undertaking for the release of the file/papers in return for payment of any costs outstanding. The appellant was advised of the opportunity to report his former solicitors to the Solicitors Regulation Authority seen no evidence that he has done all the results of any such investigation. This leads me to be sceptical over the criticisms of his former solicitors. Even if the appellant were granted an adjournment it is not clear how long a delay would have been occasioned, given that Mr Hossain claims still not to be in possession of the documents he claims would be helpful to his client's case, despite the elapse of several further months since the hearing in the First-tier Tribunal. It would not be reasonable and in accordance with the overriding objective to adjourn the appeal indefinitely, on the off-chance that the missing documents, which I repeat have not been identified with any degree of accuracy, might be forthcoming.

Conclusions

8. I have been reminded of the case of **Nwaigwe [2014] UKUT 00418** in which the President, Mr Justice McClosky, emphasised the need for fairness in determining any application to adjourn. I am satisfied that the judge did act fairly indeed dealt with the adjournment application with unusual thoroughness in a number of paragraphs explaining why in his view it was incumbent upon the appellant to prepare for the hearing and provide all necessary evidence in support of his appeal. I am satisfied

that the decision to reject not to adjourn exercised in accordance with the tribunal's overriding objective to manage cases fairly and in accordance with the 2014 Procedure Rules Rule 4(3)(h) and I am satisfied that the decision was both fair and just. As it was his appeal, the appellant had the burden of proof. The obligation rested on him to produce the relevant evidence in support of his appeal. The judge also concluded that the appellant had an ample opportunity to appoint new representatives in the ten days or so between the solicitors coming off the record and the hearing taking place. I am satisfied the judge was exercising a case management discretion well within his discretion and reached an appropriate conclusion that he was entitled to come to.

9. As far as the lack of a whole interview record is concerned, I find that a surprising submission given the number of paragraphs where the appellant dealt with these issues. In any event, the Immigration Judge appears to have comprehensively rejected the appellant's credibility having heard his evidence and having noted several discrepancies between the appellant's account in oral evidence and other evidence.
10. No clear explanation was given for the appellant's wife's failure to attend the hearing. It was suggested that she may have been in fear but there is no proper basis for that submission in my view. This was, in any event a secondary ground of attack on the decision of the First-tier Tribunal. In my view the judge appears to have conducted the hearing properly and fully considered the appellant's case in reaching his decision. Although he had no witness statement, the appellant was given a full opportunity to present his evidence and I note that the respondent did not attend the hearing, so the appellant was not cross examined.
11. Overall the decision both to refuse the adjournment application and the way the judge conducted the hearing do not disclose any material error of law. The decision to dismiss the appeal was a decision the judge was entitled to come to on the evidence before him.

Decision

12. Accordingly, the appeal to the Upper Tribunal by the appellant is dismissed.

The decision of the First-tier Tribunal to dismiss the appeal against the respondent's refusal to grant him further leave to remain on human rights grounds stands.

No anonymity direction was made by the FTT and I make no anonymity direction.

Signed

Date 27 February 2019

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 27 February 2019

Deputy Upper Tribunal Judge Hanbury