



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002001

First-tier Tribunal No: HU/00375/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 07 November 2024**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

**Jahangir Hussain
(NO ANONYMITY DIRECTION MADE)**

Applicant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: The Appellant did not appear and was not represented

For the Respondent: Mrs S. Simbi, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 13 September 2024

DECISION AND REASONS

1. On 1 December 2023, First-tier Tribunal Judge Juss (“the judge”) heard an appeal in the absence of the appellant. By a decision promulgated on 29 January 2024, the judge dismissed the appeal. The appellant now appeals to this tribunal, with the permission of First-tier Tribunal Judge Choudhury, on the basis that it was unfair for the judge to proceed in the appellant’s absence. The grounds of appeal were accompanied by a discharge summary from a local hospital which was said to demonstrate that the appellant was medically unable to attend the hearing on 1 December 2023.

Hearing in the Upper Tribunal

2. The appellant did not appear at the hearing before the Upper Tribunal. This threw the grounds of appeal against the decision of the First-tier Tribunal into sharp relief, underlining the need for fairness.
3. Under the Tribunal Procedure (Upper Tribunal) Rules 2008, the Upper Tribunal may proceed in the absence of a party where it is satisfied that the absent party had been notified of the hearing (rule 38(a)), and where it is in the interests of justice to do so (rule 38(b)). The “interests of justice” are to be construed by reference to the overriding objective of the Upper Tribunal to decide cases fairly and justly.
4. I was satisfied that the appellant had had notice of the hearing. There had been no application for an adjournment. I put the matter to the end of my list of cases, to ensure the appellant had as much time as possible to attend. I remained at the hearing centre all day, lest he returned after the conclusion of the list. He did not. I bore in mind the nature of the appellant’s human rights claim, and the fact that he may be vulnerable.
5. Taking account of these factors, and bearing in mind the fact that one facet of the overriding objective is to avoid delay, so far as compatible with proper consideration of the issues, I concluded that it would be in the interests of justice to proceed in the appellant’s absence. There was no basis to conclude that the appellant would attend in the future if I were to have adjourned of my own motion.

Factual background

6. The appeal before the judge was against a decision of the Secretary of State dated 1 October 2021 to refuse the appellant’s human rights claim, made in the form of an application for indefinite leave to remain. The judge heard the appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
7. The hearing before the judge was the second time the appeal had been due to be heard by the First-tier Tribunal. It had been listed on 24 October 2023 but adjourned at the hearing on the application of the appellant for him to obtain medical evidence and provide a witness statement. The appellant was legally represented on that occasion. The evidence was to be filed by 29 November 2023, in anticipation of the adjourned hearing before the judge on 1 December. No evidence was filed.
8. On the morning of the hearing, an email had been sent to the First-tier Tribunal which stated that the appellant was in hospital with serious chest pains. The author of the email had not been able to speak to the appellant, but said that an unnamed friend of the appellant had provided the information that it contained.
9. The judge addressed the issue of whether he should adjourn at paragraphs 8 to 11 of his decision. He cited rule 4(3)(h) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, and the overriding objective of the First-tier Tribunal (Immigration and Asylum Chamber). He directed himself pursuant to *Nwaigwe (adjournment: fairness)* [2014] UKUT 00418 (IAC), recalling that the essential test was that of fairness, namely whether the affected party would be denied the right to a fair hearing.
10. The judge recorded the Secretary of State’s submissions made in relation to an adjournment; the appellant had been told by the judge adjourning the

proceedings on 24 October 2023 that that adjournment was likely to be the last, and that the hearing was likely to proceed on the next occasion. The presenting officer before the judge had highlighted the fact that the appellant had not complied with the directions given on that occasion concerning a medical report and a witness statement.

11. The judge decided not to adjourn. In his ruling (para. 11), he observed that the appellant had not provided any of the evidence for which the previous hearing had been adjourned, and had not filed a witness statement. While there were letters from the appellant's family in his support, no family members had attended the hearing.

The law

12. The sole issue is whether the hearing before the judge was fair. That question admits of only one answer, which I must determine for myself. If the hearing was fair, then the appeal must be dismissed. If it was not, the appeal must be allowed, and the case must be remitted to the First-tier Tribunal.

A fair hearing before the judge

13. I consider that the hearing before the judge was fair. The appellant had the opportunity to attend, but did not. He had not complied with the directions previously given by the tribunal, thereby suggesting a lack of commitment to the proceedings. The information before the judge about the appellant's claimed health conditions was very limited. It was sent by a person who claimed not to have spoken to the appellant, but who had heard from an unnamed "friend" of the appellant's.
14. That is not the end of the matter, though. The hearing was either fair, or it was not. The appellant has now sought to rely on a discharge summary from a local hospital. The judge did not have the benefit of that document, but I do not consider that it takes matters much further. It was not accompanied by any form of witness statement from the appellant, explaining the timings of his conditions and presentation on the day of the hearing, nor any other form of other written explanation or medical evidence. It says nothing of the appellant's ability to conduct litigation or give evidence and whether he needed to attend the hospital at that time, on that day. It states that the appellant had been presenting with a complaint of a "cough" for "4/52", which, looking at the way in which that abbreviation is used elsewhere in the brief "comments" section, must mean four weeks.
15. I accept that the discharge summary demonstrates that the appellant had attended hospital on the day of the hearing. It does not demonstrate that he was presenting with such medical conditions that he would have been unable to attend the hearing on the day in question and that he had to attend the hospital with a cough on that day.
16. Fairness does not mean that an individual will necessarily and always be able to obtain an adjournment on request. A hearing may be fair even in the absence of a party, provided the party has been given notice, and does not have a good reason to be absent. The material before this tribunal does not demonstrate that the appellant's only option was to attend hospital on that day, especially since he reported a history of coughing for four weeks upon examination. He was discharged and advised to see his GP in the event of further symptoms.

17. Looking at the information provided in support of the adjournment application in the round, the adjournment application was forwarded to the tribunal by an unknown third party who claimed not to have been able to speak to the appellant, based on information provided to him by an unnamed friend. The medical evidence demonstrating the appellant's visit to the hospital on the day in question does not establish that he was unable to attend the hearing. The appellant had previously applied for an adjournment in order to adduce evidence which he did not provide (and which he is yet to provide, on the basis of the information before me), suggesting that his commitment to the proceedings was reduced. He did not attend the hearing before me, and had not explained why he was not there.
18. Another facet of fairness is that the appellant continues to enjoy the ability to make further submissions to the Secretary of State under para. 353 of the Immigration Rules. He has not been deprived of the ability to rely on further evidence; it is simply the case that if he seeks to do so, he will need to do so in another forum. If refused by the Secretary of State as a "fresh claim", the further submissions will attract a further right of appeal to the First-tier Tribunal.
19. Standing back, I conclude that the hearing before the judge was fair.
20. There were no other challenges to the judge's decision.
21. I therefore dismiss this appeal.

Postscript - anonymity

22. The first page of the judge's decision said that he had made an anonymity order. The final page said that there was no anonymity order. There were no reasons supporting the making of such an order. While I bear in mind the nature of the appellant's human rights claim, nothing in this decision justifies the making of an order for anonymity.
23. To the extent the judge made an order for anonymity, I revoke it.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law.

This appeal is dismissed.

Stephen H Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 October 2024