



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/01936/2013

THE IMMIGRATION ACTS

Heard at Newport
On 22 July 2013

Determination Promulgated
On 15 August 2013

Before

Mr C M G Ockelton, Vice President
Upper Tribunal Judge Grubb

Between

SOMIRUN NESSA

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondents

Representation:

For the Appellant: In person.
For the Respondent: Ms E Martin, Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellant is a national of Bangladesh. She claimed asylum in the United Kingdom. Following the refusal of her claim by the Secretary of State, she appealed to the First-tier Tribunal. She did not attend the hearing of the appeal; there was, instead, a telephone call from somebody else, saying that she was not fit to attend. Judge Archer was not persuaded that there was any good reason for her non-attendance, and proceeded to deal with the matter in her absence on 2 April 2013. On 4 April 2013 he was sent a letter by a surgery which the appellant had attended (but which apparently had not seen her previously). The letter gave no support to

the appellant's claim that she could not attend the hearing. The judge therefore saw no reason to reach a different view about whether it had been appropriate to continue in her absence. He completed his determination on 15 April 2013. He dismissed the appellant's appeal.

2. The appellant sought permission to appeal to this Tribunal. She applied out of time. Judge Saffer extended time, and granted permission on the basis that:

"It is arguable that the Tribunal should have adjourned the hearing given she has established that she was ill on the day of the hearing and had attended her doctors in Swansea that morning whereas the hearing was in Newport and her credibility was a key issue in the case"

3. It seems to us perfectly clear on the basis of the material that was before Judge Saffer as it is before us, that Judge Archer was entirely right not to adjourn the hearing. The evidence was of a mild illness, self-diagnosed, and the doctor's letter also indicated that the appellant had been seen walking down the road on the afternoon of the hearing. There was simply no evidence that she was unfit to attend the hearing of her asylum appeal, which, if there is any truth in it, would be a matter of great importance to her. We are confident that if that had been the only issue in this appeal, it would not have detained us for very long.
4. During the hearing before us, however, another issue arose. Doubts about the appellant's credibility have formed a considerable part of the basis for the Secretary of State's refusal of her claim and the judge's dismissal of her appeal. Those doubts arise in part from the claimant's history, as a person who came as a visitor with her children and claimed asylum only shortly before the expiry of her visitor's visa, partly because the claim appeared to be in contradiction of what had been said, and documented, in relation to the application for the visa, and partly because of other inconsistencies. We rehearsed some of these with the appellant. It became clear that certain parts of her interview must have been mistranslated; or, if there was no fault in translation, the interviewer failed to respond to what the appellant was saying. The clearest example is in questions 36 and following, when the appellant is talking about a woman called Newarun Nessa, and the interviewer thinks she is talking about a man. It may be that the interviewer's assumption is justifiable, given that the questions were about a man; but it is clear from the English transcript that the two of them were at cross purposes.
5. We should not be understood to give any indication that the appellant's appeal should succeed. It is for her to show that her word is entitled to credit. In that context, however, it is important that factors such as those that we have indicated are taken properly into account. Newarun Nessa is clearly a woman's name, and this feature of the interview should have been identified by the judge of the First-tier Tribunal. We appreciate that it is much easier to say that in retrospect and that he had no assistance at all in identifying any defects of the interview record.

6. Nevertheless, it appears to us that his decision must be set aside. This is an appropriate case for remittal to the First-tier Tribunal and we have identified the appropriate date for a new hearing as 21 August 2013. We told the appellant of that date and that she must expect that the final decision of her appeal to the First-tier Tribunal will be taken following the hearing on that date.
7. The appeal to the Upper Tribunal is therefore allowed: the appellant's appeal against the Secretary of State's decision is remitted for hearing before the First-tier Tribunal's sitting at Columbus House, Newport, on 21 August 2013 at 10am.

C M G OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 15 August 2013