



**First-tier Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/21446/2014

THE IMMIGRATION ACTS

Heard at Bradford

**Decision & Reasons
Promulgated**

On 17th December 2014

On 23rd December 2014

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR RAJA ASAD KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Jamil

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born 1st February 1990. He appeals with permission the decision of the FtT (Judge Henderson) which in a determination promulgated on 4th September 2014 dismissed his appeal against the decision of the Respondent to refuse him indefinite leave to remain as a spouse and to remove him under Section 47 of the Immigration Asylum and Nationality Act 2006.

2. The Appellant's claim is that the Respondent's decision was not in accordance with the Immigration Rules (paragraphs 287/289 of HC 395) and was unlawful as it would disrupt his family life developed with his wife and his private life shared with his friends.
3. The Respondent's case has always been that the Appellant fails under the Immigration Rules because he and his wife are not in a subsisting relationship.
4. The Appellant did not attend the hearing before the FtT on 20th August 2014. The Judge was not satisfied that there was good reason for the Appellant's non-attendance and therefore proceeded to hear the appeal in his absence. After considering the evidence before her she dismissed the Appellant's appeal.
5. The grounds of appeal criticise the Judge in general terms stating that,

"The learned Immigration Judge with respect to himself, misdirected himself as to the effect of the evidence in its totality."

The grounds continue by criticising the Judge's decision to proceed in the Appellant's absence by saying,

"He accepts (para 13) to his determination that telephone call been made to the court before hearing start that the Appellant's unable to come to court because (illness) (sic)."

6. The grounds continue,

"He could have delayed the hearing until he find out (sic)".

The Upper Tribunal Hearing

7. Mr Jamil appeared on behalf of the Appellant and made submissions. I am bound to say that Mr Jamil's submissions were in general terms rather than particular ones. He submitted that the Judge should have adjourned the hearing until a later date and this would have allowed the Appellant to "come back" to court and give his evidence. He referred to Rule 19 and Rule 21 of the Asylum and Immigration Tribunal (Procedure) Rules 2005. His final submission was to say that the Appellant's evidence for his case was crucial.
8. Mr Diwnycz unsurprisingly referred to the Rule 24 response served by the Respondent and said he could do no better than to point me to paragraph 3 contained therein. He submitted that there is no error in either the Judge's approach to the case, nor in her findings that the Appellant's credibility is significantly undermined. The determination should stand.

Consideration and Decision

9. A First-tier Tribunal Judge may hear an appeal in the absence of a party or his representative, if satisfied that the party or his representative -

- (a) has been given notice of the date, time and place of the hearing;
and;
- (b) has given no satisfactory explanation for his absence.

10. It is plain that the above Rule allows a Judge to decide a case unless there is a satisfactory explanation for absence. The Judge records at [11],

“...At the outset of the hearing I was informed by the court clerk that a call had been received from customer services stating that they had received a call from the Appellant’s friend who stated that the Appellant had a fall down a flight of stairs and had to attend hospital and as a result wished for an adjournment. The clerk informed the customer service agent that it would be unlikely that an adjournment would be granted without receipt of any medical evidence confirming the Appellant was not well enough to attend the hearing day. The message was passed on to advise the Appellant’s friend to fax an adjournment request with evidence as soon as possible.”

11. In [12] the Judge goes on to set out a fax was received. It was a copy of an outpatient prescription for co-codamol and another drug diclofenac. Attached to this was a copy of another document which appeared to have been overlaid by the outpatient prescription. This stated that Asad Khan had attended the Accident and Emergency Department on 20th August 2014 at 1.12pm. it gave no further details.

12. The Judge did not regard the scant evidence put before her, for absence and seeking an adjournment, as satisfactory. I do not see how she could reasonably have found otherwise. There was no medical evidence that the Appellant was not fit to attend the hearing. In fact there was no explanation at all put forward at all why the Appellant was not fit to attend.

13. Further, to date, despite Mr Jamil’s general plea before me that the Judge should not have proceeded in the absence of the Appellant, he had nothing to add either in the form of a statement from the Appellant or more pertinently medical evidence, by way of explanation of why the Appellant could not attend the hearing on 20th August 2014. I cannot think that Mr Jamil would have been in any way hesitant about indicating to me any satisfactory explanation for the Appellant’s absence since there has certainly been ample time to acquire such evidence since 20th August 2014.

14. I deal with the suggestion in the grounds that the Judge should have delayed the proceedings and Mr Jamil’s plea that it is crucial that the Appellant’s evidence be heard. Since I am satisfied that the Judge correctly assessed that she was entitled to proceed in the Appellant’s absence, it follows that she was correct to proceed without further delay.

15. The Judge’s consideration of whether to proceed was not one made in haste - indeed she took it upon herself to try and enquire from the

Appellant his reasons for not attending. Why she did this I am unsure, but it adds strength to my view that the Judge has given her full consideration on whether it is fair and reasonable to proceed in the Appellant's absence.

16. So far as Mr Jamil's final plea to me that the matter should be reheard because it is crucial that the Appellant give his evidence in the case, that was simply as far as his plea went. He gave no indication of what this crucial evidence consists of; nor indeed why it would change the decision which the First-tier Tribunal Judge made, after careful consideration of the evidence before her.
17. The First-tier Tribunal Judge conducted a full hearing on the evidence before her. She found discrepancies in the evidence which seriously undermined the Appellant's credibility. Nothing that was put forward by Mr Jamil, led me to the conclusion that the FtT Judge had erred in her findings of fact.

Notice of Decision

For the above reasons this appeal is dismissed.

No anonymity direction is made.

Signed

Date

Judge ROBERTS
Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

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

Signed

Date

Judge ROBERTS
Judge of the Upper Tribunal