IAC-AH-KRL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08069/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 8 July 2015	**On 7 September 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

KC
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Worthington, Parker Rhodes Hickmotts, Solicitors
For the Respondent: Mrs R Pettersen, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, KC, was born in 1987 and is a female citizen of Gambia. She arrived in the United Kingdom in May 2009 as a dependant spouse. She was granted further leave to remain in that status on 26 October 2009 and, on 29 November 2011, a further application for leave to remain was refused. On 8 August 2013, the appellant applied for asylum. Her application was refused and the decision was taken on 25 September 2014 to remove the appellant from the United Kingdom. She appealed against that decision to the First-tier Tribunal (Judge Robson) which, in a decision

dated 20 February 2015, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The main ground of appeal concerns the refusal of the First-tier Tribunal Judge to adjourn the hearing of the appellant's appeal. The hearing took place in Bradford on 2 February 2015. The judge noted that the appellant had been represented by solicitors (Switalskis). Those solicitors indicated to the Tribunal that they were no longer acting at the Case Management Review (CMR) of 27 October 2014. The appellant was subsequently represented by the Manuel Bravo Project. Those representatives applied for an adjournment which was granted. In particular, the representative sought to obtain expert evidence relating to female genital mutilation (FGM). It appears that the appellant was then granted legal funding and, in order to obtain the expert report, a further adjournment was granted to 2 February 2015. However, Manuel Bravo Project appears to have ceased acting for the appellant who had instructed Ison Harrison Solicitors who wrote to the Tribunal on 30 January 2015, a letter which was received by the judge at the hearing on 2 February 2015. That letter indicated that the solicitors had received,

> "... a referral and copy of [KC's] papers this week … but have not had the opportunity to meet with her and take instructions on this case. She will, we understand, seek a short adjournment in order to meet with us and we therefore write simply to confirm that we would be in a position to meet with her in the same week as the hearing and would be optimistic of being able to represent her and prepare for a hearing, should her adjournment request be successful."

3. The judge refused to adjourn the hearing. At [26], he refers to "inquiries" which he caused to be made with Ison Harrison and from which he learned that the appellant (not the solicitors) had asked for the adjournment; the representative Ison Harrison who had been present in the building had simply acted as a "messenger"; Ison Harrison had no funding in their instruction; and any file relating to the appellant had not been received by Ison Harrison and they had no expert report.

4. The grounds of appeal assert that the judge failed to apply the overriding objective which appears in the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (paragraph 2). Contrary to what the judge stated in the decision, Ison Harrison had received the file and were in a position to meet with the appellant in the same week as the hearing. There had been problems obtaining a new representative over the Christmas/New Year period.

5. The judge makes no reference to the overriding objective which in the new Procedure Rules from 2014 provides the only guidance to First-tier Tribunal Judges as to when they should or should not adjourn a hearing. In the present case, I am concerned that the judge was well aware that there had been a number of adjournments (this case had started off in the Fast Track, the appellant detained at Yarl's Wood) and that he also had the letter from solicitors which clearly indicated that instructions would be taken forthwith; there was a considerable likelihood that an expert report would also be obtained given that the solicitors had obtained legal aid funding (*"we understand [there to have been] a grant of legal aid funding by the Legal Aid Agency …"*), a point made

by Ison Harrison in their letter that they had obtained funding and had obtained the appellant's file of papers, both matters which the judge appears to have misunderstood [26]. It is also unclear why the judge thought it was significant that the appellant had asked for an adjournment in person, rather than through Ison Harrison. Ison Harrison were in no position to seek an adjournment since they had not formally been entered on the record as acting for the appellant; their letter made it clear the appellant herself would attend and apply for an adjournment. The clear impression left by [26] was that, for some reason, the judge held this fact against the appellant in determining whether or not to adjourn the hearing. Likewise, I cannot see that there was anything sinister in the fact that the representative of Ison Harrison, who was in Phoenix House, Bradford on the day of the hearing, was only acting as a messenger, that is to deliver the letter to the judge. Once again, the representative would have had no status before the judge at the hearing because his firm had not formally become the representatives of the appellant. I am concerned that the judge has had regard to aspects of the application to adjourn which he has misunderstood or misinterpreted and that these are matters which have had a material influence on his decision to refuse to adjourn the hearing. I am well aware of the need of First-tier Tribunal Judges to adopt a robust approach to applications for adjournment, but I am satisfied, in this particular instance, that the judge failed to understand properly the nature of the application being made to him and the position of Ison Harrison. I therefore set aside the judge's decision. The matter must be remitted to the First-tier Tribunal because the appellant has not had a fair hearing. None of the findings of the First-tier Tribunal Judge shall stand. The First-tier Tribunal (not Judge Robson) will remake the decision.

Notice of Decision

6. The decision of the First-tier Tribunal which is dated 20 February 2015 is set aside. None of the findings of fact shall stand. The appeal is remitted to the First-tier Tribunal (not Judge Robson) for that Tribunal to remake the decision.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 2 September 2015

Upper Tribunal Judge Clive Lane