



IAC-AH-DP-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/05659/2015

THE IMMIGRATION ACTS

Heard at Field House
On 11th January 2016

Decision & Reasons Promulgated
On 17th February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

E M A

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms S Sreeraman, Home Officer Presenting Officer

For the Respondent: Ms C Querton of Counsel

DECISION AND REASONS

1. The respondent appealed, with permission, against the decision of Judge Eames promulgated on 10th September 2015, allowing the appellant's appeal against the respondent's decision to remove her to Pakistan following a decision to refuse to grant her leave to remain as a refugee, humanitarian protection or protection of the European Convention. The appellant is a national of Pakistan born on 5th August 1991.

2. The background to the appeal is that the appellant lived in Nigeria on a residency visa which was renewed every few years and she had not lived in Pakistan. She was issued with a visit visa to the United Kingdom in 2001, 2004 and 2007 and a further visa of a type unknown in 2012. She entered the UK on 17th July 2012 leaving Nigeria using her own passport and on 18th October 2012 she was issued with an IS151A, IS75 and IS76 on grounds of verbal deception seeking leave to remain in the UK and she claimed asylum on 18th October 2012.
3. The appellant claims that she had converted to Christianity and she would be afraid to go to Pakistan not least because of her membership of a particular social group, and that being she was a single woman she may be ill-treated.
4. The respondent accepted that she had never lived in Pakistan but her conversion to Christianity and the claimed relationship with her father was not accepted. Overall her credibility was not accepted in particular that she was a genuine refugee and in need of international protection. Her case was also considered under paragraph 276ADE and Appendix FM and outside the Rules on human rights grounds. Suffice it to say that the reasons for refusal letter ran to 23 pages.
5. When the hearing came before First-tier Tribunal Judge Eames at Newport on 20th August 2015 the Home Office Presenting Officer Ms Davies sought an adjournment at the start of the hearing on the grounds that the case had been a float (i.e. not listed to any particular Tribunal Judge's list and taken on only when a Judge had space on their list). This meant that the Home Office Presenting Officer maintained that she had not had time to prepare the case and there was a substantial appellant's bundle. It involved two potential countries of return and Ms Davies stated that she only had the lunch break to prepare most of which had been spent consulting with her manager about how to proceed.
6. The Judge recorded at paragraph 8 that the hearing was beginning at 1330 and she argued that picking up the float case that late in the day without having seen it prejudiced the respondent and it was inappropriate to list an asylum case such as this as a float.
7. At the hearing before me Mrs Sreeraman noted the case of **Nwagwe (adjournment: fairness)** [2014] UKUT 00418 (IAC) which made it clear that the principle in issue was fairness and in this case the respondent had been deprived of the opportunity to prepare the case and thus participate. A previous judge had clearly deemed it as unsuitable and this was recorded at paragraph 10. She referred to Rule 2 of The Tribunal Procedure Rules (First-tier Tribunal) (IAC) 2014 and averred that proper consideration had not been given to the case. The asylum claim was a complex matter involving issues relating to credibility, religion and social grouping.
8. Ms Querton, in a valiant attempt, asserted that there was no error of law and noted that the Judge had balanced the competing interests, noted that the Home Office Presenting Officer had not had time to prepare, that a previous Judge had identified this case was not suitable for a float but asked himself the correct questions in

relation to the overriding objective in the interests of justice. Of particular importance was the issue of delay the appellant had claimed asylum in 2012 and the decision had been given in 2015.

9. Fairness required that the matter regarding delay was considered. The basis of the claim had not changed and there were no new issues to be considered. Even if there was an indication that there was an error that it was not material because the determination was well drafted and clear the Judge directed himself to the relevant country guidance in the treatment of women. The Secretary of State did take part in the case and there was cross-examination. There was no specific prejudice although she conceded that the central issue worked in relation to the appellant's Christianity.

Conclusions

10. I set out the overriding objective Rule 2 of The Tribunal Procedure Rules (First-tier Tribunal) (IAC) 2014:
- 2.-(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
 - (2) Dealing with a case fairly and justly includes -
 - (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;
 - (b) avoidance unnecessary formality and seeking flexibility in the proceedings;
 - (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
 - (d) using any special expertise of the Tribunal effectively; and
 - (e) avoiding delay , so far as compatible with proper consideration of the issues.
 - (3) The Tribunal must seek to give effect to the overriding objective when it -
 - (a) exercises any power under these Rules; or
 - (b) interprets any rule or practice direction.
 - (4) Parties must -
 - (a) help the Tribunal to further the overriding objective; and
 - (b) co-operate with the Tribunal generally.
11. Not only is the question of delay pertinent but dealing with a case fairly and justly included dealing with the case in ways which are proportionate to the importance of the case and the complexity of the issues. This is an asylum case with a wealth of evidence and which had already been marked as unsuitable for a float case and it

would appear from the commencement of the timing that it was started at half past one in the middle of the lunchtime. Of particular importance is Rule 2(2)(c) which identifies that it is necessary to ensure, so far as practicable, that the parties are able to participate fully in the proceedings. The avoidance of delay is qualified by the provision that this should be so far as compatible with proper consideration of the issues. There is no doubt that this was a very complex case not least involving credibility and whether or not the appellant had indeed converted to Christianity.

12. I note particularly that the Judge recorded the evidence which was submitted prior to the reasons for refusal letter but it is evident that witness statements of the appellant and her fiancé together with a detailed response to the reasons for refusal letter were submitted on 5th August 2015, at a time which *postdates* the reasons for refusal letter and there is evidence that would need to have been considered by the respondent.
13. **Nwagwe (adjournment: fairness)** [2014] UKUT 00418 (IAC) decides as follows

“If a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party’s right to a fair hearing? See SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284”.
14. This underlines that it is not whether the First-tier Tribunal acted reasonably rather that the test to be applied is that of fairness. I fail to see how the Home Office Presenting Officer at such short notice and with the extent of material to cover could participate fully in the proceedings. The Judge did note that the case was listed as unsuitable for floating “like all asylum appeals” [10] and there is no indication that evidence was submitted that the respondent *had agreed* at a higher level to the case being a float. Unfortunately the fact that the appellant had waited long enough was of limited application in this instance particularly bearing in mind the matter now will have to be reheard.
15. I bear in mind the submission that the Judge made a detailed determination applying the relevant case law but regrettably it is the fact-finding which is also crucial in a case of this nature and as such I find that the error in procedure undermines that process and thus there is a material error of law through the failure to allow the Home Office to participate fully.
16. I therefore allow the application for permission to appeal on the basis that there is an error of law which may be material.
17. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE

2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

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 him or any member of their 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 10th February 2016

Deputy Upper Tribunal Judge Rimmington