



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

Appeal Number: IA/00493/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 17 February 2016**

**Decision Promulgated
On 25 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**HARPREET KAUR AJIT SINGH MUNDE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Solomon (counsel), instructed by Aschfords Law, solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of Designated First-tier Tribunal Judge Manuell promulgated on 26 June 2015, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 17 May 1985 and is a national of India.

4. On 7 December 2014 the Secretary of State refused the Appellant's application for an EEA residence card.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. Designated First-tier Tribunal Judge Manuell ("the Judge") dismissed the appeal against the Respondent's decision.

6. Grounds of appeal were lodged and on 24 October 2015 Upper Tribunal Judge Plimmer gave permission to appeal stating *inter alia*

"This is a case in which credibility was in dispute and it was clearly necessary for the appellant to have an opportunity to address any issues of concern to the Judge. In addition, the Judge was aware that if an adjournment was not granted the appellant would be unrepresented at the hearing. In all the circumstances it is arguable that the Judge acted unfairly in refusing to adjourn the hearing. As set out in Nwaiagwe (adjournment; fairness) [2014] UKUT 418 (IAC) the question is not whether the Judge acted reasonably but whether the Judge acted fairly.

"2. The renewal grounds set out two grounds of appeal and permission is granted in relation to those grounds only"

The Hearing

7 (a) Mr Solomon, for the appellant, told me that he had discussed this case with the Senior Home Office Presenting Officer and that parties' agents have agreed that the decision contains a material error of law. He adopted the terms of the grounds of appeal and told me that the material error of law is found that at [6], where the Judge refused to adjourn the appeal. He referred me to Nwaiagwe (adjournment; fairness) [2014] UKUT 418 (IAC), and told me that the Judge was wrong to refuse to grant an adjournment, and that the Judge's forthright findings about the appellant's lack of credibility are demonstrative of the lack of fairness in the procedure adopted by the Judge. He took me to the grant of permission to appeal, made by Upper Tribunal Judge Plimmer on 24 October 2015, and adapted Upper Tribunal Judge Plimmer's reasons for granting leave to appeal as part of his submission.

(b) He urged me to set the decision aside and to remit this case to the First-tier Tribunal to be determined of new. When I suggested that I could hear evidence and decide the case today (in accordance with the directions issued to parties in advance of today's hearing), he referred me to the President's guidance and argued that because there had been unfairness in the First-tier

Tribunal hearing on 22nd June 2015, the most appropriate course of action is to follow Presidential guidance and remit this case to the First-tier.

8. Mr Bramble, for the respondent, agreed that the decision contains a material error of law. He did not agree entirely with Mr Solomon's submission. Instead he told me that there was no error of law in refusing to adjourn the case, but having decided to deal with the case in the absence of the appellant, (Mr Bramble argued that) the Judge's findings in relation to the appellant's honesty at [16] and the Judge's findings in relation to credibility are flawed because those findings could not be tested against the appellant's oral evidence. He urged me to set the decision aside and remit this case to the First-tier Tribunal to determine afresh.

Analysis

9. The 2014 Procedure Rules Rule 4(3)(h) empowers the Tribunal to adjourn a hearing. Rule 2 sets out the overriding objectives under the Rules which the Tribunal "*must seek to give effect to*" when exercising any power under the Rules. The overriding objective is to deal with cases fairly and justly. This is defined as including "*(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) avoiding unnecessary formality and seeking flexibility in the proceedings; (c) ensuring, so far as is practicable, that the parties are able to participate fully in the proceedings; (d) using any special expertise of the Tribunal effectively; (e) avoiding delay so far as compatible with proper consideration of the issues*".

10. In Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) it was held that 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 First-tier Tribunal 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?

11. At [6] the Judge accepts that the appellant could not attend the hearing because she was unwell. Three days before the hearing the appellant had an emergency admission to an antenatal clinic. The Judge's refusal to adjourn resulted in the appellant's representatives' withdrawal from acting, so that the consequences of refusing to adjourn were that the appellant was neither present nor represented. It was clear that the appellant wanted to be both present and represented.

12. Between [13] and [21] the Judge sets out strident findings of fact. There he finds, on the basis of the documentary evidence alone, that the appellant is

not a reliable witness; that the appellant is not a credible witness; that the appellant is dishonest and that application is a contrivance. None of those matters have been put to the appellant for comment. The respondent's own reasons for refusal letter does not raise questions of honesty, but proceeds on the basis that the appellant has not produced sufficient evidence to discharge the burden of proof. The appellant did not therefore have fair notice of the case pled against her which lead to the Judge's findings of fact.

13. I therefore find that the decision is tainted by a material error of law. I must set the decision aside.

Remittal to First-Tier Tribunal

14. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

15. In this case I have determined that the case should be remitted because the Appellant did not have a fair hearing. In this case none of the findings of fact are to stand and the matter will be a complete re hearing.

16. I remit the matter to the First-tier Tribunal sitting at Richmond or Hatton Cross to be heard before any First-tier Immigration Judge other than Designated Judge Manuell.

CONCLUSION

Decision

17. The decision of the First-tier Tribunal is tainted by material errors of law.

18. I set aside the decision. The appeal is remitted to the First Tier Tribunal to be determined of new.

Signed

Date 22 February 2016

Deputy Upper Tribunal Judge Doyle