



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

Appeal Number: IA/08104/2015

THE IMMIGRATION ACTS

**Heard at Field House
On: 27 May 2016**

**Decision & Reasons Promulgated
On: 7 June 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

**SAGAR CHANDRAKANT PANCHAL
(NO ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Maqsood, counsel

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the decision, promulgated on 9 October 2015, of First-tier Tribunal Judge M A Khan (hereinafter referred to as the judge).

Background

2. The appellant entered the United Kingdom with leave to enter as a student on 1 October 2009, valid until 21 September 2011. That leave was extended in the same capacity until 18 November 2014, when the appellant applied for further leave to remain outside the

Immigration Rules on the basis that he had been diagnosed with Bell's palsy as well as an ear problem, which prevented him from studying. The appellant wished to remain in the United Kingdom in order to continue studying once he had received medical treatment and his medical condition improved.

3. On 16 February 2015, a decision was made to remove the appellant. A refusal letter of the same date stated that the appellant's medical condition was not considered to amount to exceptional circumstances.
4. At the hearing before the judge, the appellant did not attend and nor was he represented. The appeal proceeded by way of submissions on behalf of the respondent alone. The judge found that the appellant's medical condition did not meet the high threshold required in relation to Article 3 ECHR. Furthermore, he found that the appellant could not meet the requirements of paragraph 276ADE of the Rules and that the appellant's time in the United Kingdom had been precarious.
5. In the grounds seeking permission, the appellant argued that the judge had stated that he heard oral evidence from the appellant when this was not the case. The appellant added that he had been unable to contact the tribunal or a lawyer about his appeal because he was unwell and receiving medical treatment in hospital at the time of the hearing. He submitted that the appeal should have been adjourned in any event because of the indication in the papers that he had ongoing health concerns.
6. First-tier Tribunal Judge PJM Hollingworth granted permission, finding that it was arguable that an error of law had arisen regarding the scope of evidence considered by the judge. Permission was not expressly refused on the other grounds.
7. The respondent's Rule 24 response opposed the appeal and stated that the judge properly directed himself. The respondent argued that it was clear that the appellant did not attend the hearing and nor had he requested an adjournment. It was said that the judge's reference to oral evidence was a "slip of the pen." It was further submitted that the erroneous reference to oral evidence could not make the decision untenable. The appellant was said to have no prospect of success as a former Tier 4 migrant who wished to remain in the United Kingdom for medical treatment, outside the Rules. It was open to the judge to dismiss the appeal.

The hearing

8. At the hearing before me, Mr Maqsood confirmed he was relying on the two issues raised in the grounds, that of whether oral evidence was considered and secondly, that the appeal ought to have been adjourned.

9. At this juncture, I advised the parties that the judge's handwritten note of the hearing indicated that he proceeded in the absence of the appellant and heard submissions on behalf of the respondent.
10. Mr Maqsood conceded that it was difficult to see how the error the judge made in referring to oral evidence could have affected his decision. Nonetheless, he argued that the judge should have adjourned the appeal of his own volition on the basis of the information sent with an adjournment application made on 23 September 2015. His reasoning was that the judge should have realised that the appellant may not have been able to attend the hearing for the same reasons set out in the application. He invited me to afford the appellant an opportunity to be heard. In terms of materiality, it may have been that the judge's private life findings would have been different had the appellant been able to attend.
11. In reply, Mr Walker reiterated that the first ground concerned a slip of the pen. The appellant's adjournment request had been refused and he was served with notice of the hearing. He argued that had the appellant been present, it would have made no difference as the judge made clear findings as to his circumstances and private life.
12. Mr Maqsood argued, in response, that the appellant would have provided evidence about what he had accomplished with his studies, had he attended the hearing. He would have expanded on the grounds set out in his application for further leave to remain as to why he could not return to India.

Decision on error of law

13. The judge recognised at the outset, as stated on page one, paragraph 2 of his decision that the appellant was not in attendance and was not legally represented. His note of the hearing reinforces that point. Indeed, the appellant agrees that he was not present. Yet, at [10] of the decision, the judge erroneously states that the appellant's case was set out in his application form, the documentary evidence and "his oral evidence." Given the foregoing points, it is obvious that the judge made a typographical error, most likely having inserted a standard paragraph at this part of the decision. I do not find that this mistake amounts to a material error of law, given that the judge considered all the evidence which was before him and this did not include the appellant's oral evidence.
14. The second ground relates to the alleged failure by the judge to adjourn the appeal absent an application to do so. Such an application was made two days before the hearing. The application, drafted by legal representatives, stated that the appellant was unable to attend their office or the tribunal owing to "a condition of his eyes." An accompanying letter from a doctor's practice stated that the appellant "doesn't feel he will be able to travel (to the hearing) due to

his poor vision and would like a new date.” The writer states that the appellant was advised to seek assistance at an eye hospital. That application was refused because, *“The GP’s note does not say that in his medical opinion the appellant is unfit for the hearing – it merely says the appellant feels he will be unable to travel. This is not a medical opinion.”*

15. No additional medical evidence was before the judge which might support the appellant’s claim to be unfit to attend the hearing and nor was a further application made for an adjournment. Despite being legally represented by Maxim Law since March 2015, the appellant failed to provide any documentary evidence in support of his appeal. The judge therefore considered the matter on the basis of evidence contained in the appellant’s application for further leave to remain. That evidence included details of the appellant’s eye condition, for which he wished to receive medical treatment in the United Kingdom. The judge fully considered the appellant’s health conditions as well as his studies at [11,12, 22-25] of the decision and concluded that there were no compelling circumstances to justify a grant of leave to remain outside the Rules; that he could not meet the requirements of the Rules and that his removal was a proportionate response. The presence of the appellant at the hearing would have made no difference to these findings as the facts were before the judge in the papers before him.
16. No anonymity direction was made by the judge and I can see no reason for making one now.

Conclusions

The decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I uphold the decision of the First-tier Tribunal.

Signed:

Date: 5 June 2016

Deputy Upper Tribunal Judge Kamara