



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

Appeal Number: IA266082014

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**On 13<sup>th</sup> May 2016**

**Decision & Reasons  
Promulgated  
On 25<sup>th</sup> May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**IMRAN KHAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss A Hashmi of Mamoon Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a decision of Judge Chambers of the First-tier Tribunal (the FTT) promulgated on 16<sup>th</sup> October 2014.
2. The Appellant is a male citizen of Pakistan born 4<sup>th</sup> April 1979 who applied for leave to remain in the United Kingdom based upon his human rights. The Appellant claimed that his life would be in danger if removed to

Pakistan and therefore his removal would breach Article 3 of the 1950 European Convention on Human Rights (the 1950 Convention), and he relied upon Article 8 in relation to his private life.

3. The application was refused on 10<sup>th</sup> June 2014, and the appeal was heard on 9<sup>th</sup> October 2014.
4. The Appellant applied for an adjournment of the hearing to obtain a psychologist's report. This application was refused. The FTT heard evidence from the Appellant and dismissed the appeal.
5. The Appellant applied for permission to appeal to the Upper Tribunal. He relied upon two grounds which may be summarised as follows.
6. The Appellant contended that the FTT had acted unfairly by refusing his application for an adjournment. The Appellant had submitted to the FTT a letter from a psychologist confirming that the Appellant had been due to see her on 6<sup>th</sup> October 2014 for a psychological assessment but had been unable to attend. A further appointment had been booked for 10<sup>th</sup> October the day after the hearing. It was submitted that the FTT had erred by not allowing the Appellant the opportunity to provide medical evidence as to his mental health difficulties.
7. Secondly it was contended that the FTT had erred by not considering the Appellant's private life, as he had been in the United Kingdom since May 2005.
8. Permission to appeal was granted by Judge Astle and I set out the grant of permission in part;
  - “3. The grounds of the application assert that an application for an adjournment to obtain medical evidence was unfairly refused. The Appellant had been due to see a psychologist on 6<sup>th</sup> October 2014 but was arrested. Another appointment was booked for the day after the hearing. A letter was submitted confirming these things. Further it is argued that the judge erred in failing to consider the Appellant's private life.
  4. In respect of the last point, the judge's findings at paragraphs 40 to 42, albeit brief, address the private life issues. However it is arguable that at paragraph 5 he misstated the overriding objective and in so doing erred in his consideration of the adjournment application. Permission is therefore granted.”
9. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 contending in summary, that the FTT had not erred and had dealt with the adjournment request appropriately.
10. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FTT decision contained an error of law such that it should be set aside.

## **Oral Submissions**

11. I observed to Miss Hashmi, that the grant of permission was not entirely clear, as to whether permission was granted on both grounds, or only in relation to the adjournment issue. Miss Hashmi stated that her view was that permission to appeal had only been granted in relation to the refusal of the FTT to grant an adjournment, and she did not pursue the ground of appeal that related to the Appellant's private life.
12. I noted that the Tribunal had received from the Appellant's solicitors, on 12<sup>th</sup> May 2016, a psychologist's report dated 10<sup>th</sup> April 2016. Miss Hashmi stated that reliance was not placed upon the report in relation to the error of law hearing, but if the FTT decision was set aside and needed to be re-made, then the Appellant would wish the psychologist's report to be considered.
13. In relation to error of law, Miss Hashmi relied upon the written ground of appeal, submitting that the FTT had acted unfairly in refusing to grant an adjournment so that the Appellant could obtain and submit a psychologist's report.
14. Miss Hashmi accepted that mental health issues had not played any part in the Appellant's application for leave to remain, and had not been raised as a ground of appeal to the FTT. This issue had been raised for the first time at an FTT hearing on 26<sup>th</sup> August 2014, which had been adjourned to enable the Appellant to supply medical evidence.
15. Mr McVeety relied upon the rule 24 response, and argued that the FTT had considered the appropriate issue when refusing the adjournment request and the appropriate issue was whether or not there would be a fair hearing. I was asked to find that the FTT decision did not disclose an error of law.
16. At the conclusion of oral submissions I reserved my decision.

## **My Conclusions and Reasons**

17. As agreed by both representatives, the only issue before me related to whether the FTT had erred in law by acting unfairly and refusing the adjournment request.
18. I find no material error of law for the following reasons.
19. It is accepted on the Appellant's behalf that mental health issues were not raised in his application for leave to remain, and therefore not considered in the reasons for refusal letter dated 10<sup>th</sup> June 2014. The only medical issue raised by the Appellant and therefore considered in the refusal, related to back pain.
20. The Appellant did not raise mental health issues in his appeal to the FTT. As accepted by Miss Hashmi, the first time that the Appellant's mental

health was raised as an issue was at an FTT hearing on 26<sup>th</sup> August 2014, which was adjourned for medical evidence to be produced.

21. The next FTT hearing took place on 9<sup>th</sup> October 2014 and there was no medical evidence.
22. The FTT noted that there was no evidence from the Appellant's general practitioner to confirm that it had been thought necessary to refer the Appellant to a psychologist.
23. There was a letter from a psychologist produced to the FTT, which was dated 8<sup>th</sup> October 2014. All that this letter stated was that the Appellant should have attended an appointment on 6<sup>th</sup> October 2014, but he had failed to do so because he had been arrested, and a further appointment had been arranged to take place on 10<sup>th</sup> October 2014.
24. The FTT observed in paragraph 5 that the application for an adjournment was an inconvenience to the Tribunal. This was not the issue that needs to be considered, and in my view the FTT does demonstrate thereafter, that the appropriate issue was considered when considering the adjournment application. The appropriate issue has been clarified by the Upper Tribunal in Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) in which it was stated in the headnote;

“Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question to 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 rights to a fair hearing? See SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284.”

25. Contrary to the view of the judge granting permission, I do not find that the FTT misstated the overriding objective. The appeal hearing took place prior to the introduction of the 2014 Tribunal Procedure Rules, and therefore the FTT was dealing with the overriding objective as set out in the 2005 Procedure Rules which is to deal with proceedings as fairly, quickly and efficiently as possible.
26. The FTT also appropriately considered rule 21(2) of the 2005 Procedure Rules which states that the Tribunal must not adjourn a hearing of an appeal unless satisfied that the appeal cannot otherwise be justly determined.
27. The FTT stated in paragraph 5;

“The fundamental issue is whether the appeal can be justly determined without granting an adjournment. I was satisfied that good reasons had not been demonstrated to secure an adjournment and that proceeding with the appeal would result in a fair hearing and a fair disposal of the issues.”

28. The above demonstrates that the Tribunal had in mind the issue of fairness, and whether to refuse an adjournment would deprive the Appellant of a fair hearing.
29. In my view the refusal of the adjournment did not deprive the Appellant of a fair hearing. The Appellant had had ample opportunity to provide medical evidence following the adjournment of the hearing on 26<sup>th</sup> August 2014. It was appropriate for the Tribunal to observe in paragraph 5;

“Although it was urged on behalf of the Appellant that he had consulted a GP no evidence of that was presented. It is not shown that the Appellant has a psychological condition. It is not shown even if he has a psychological condition that the condition has any bearing on the issues in this appeal.”
30. In my view the FTT was fully entitled to take the view that no satisfactory medical evidence had been submitted to show that the Appellant was suffering from any mental health issues that had any relevance to the appeal hearing.
31. Although Miss Hashmi stated that no reliance was placed upon the report that had been received by the Tribunal on 12<sup>th</sup> May 2016, in relation to the error of law hearing, she did in fact refer to it, and I note that the report does conclude that the Appellant is currently depressed and experiences high levels of anxiety. I make no finding as to whether that conclusion would have had any relevance at the hearing before the FTT. The point is that the FTT refused an adjournment, because there was no satisfactory evidence that the Appellant had any relevant mental health issues, and if, following the production of the report, the Appellant believes this forms a basis for making a fresh application then it is open to him to make such an application.
32. In my view, the FTT dealt entirely appropriately with the application for an adjournment, and the decision to refuse the application, did not deprive the Appellant of the right to a fair hearing.

### **Notice of Decision**

The making of the decision of the FTT did not involve the making of an error on a point of law such that the decision must be set aside. I do not set aside the decision. The appeal is dismissed.

### **Anonymity**

No anonymity direction was made by the FTT. There has been no request for anonymity made to the Upper Tribunal, and no anonymity order is made.

Signed

Date 18<sup>th</sup> May 2016

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date 18<sup>th</sup> May 2016

Deputy Upper Tribunal Judge M A Hall