



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

Appeal Number: EA/01351/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 September 2017**

**Decision & Reasons  
Promulgated  
On 22 September 2017**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**MD ABUL HASNAT  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No representation  
For the Respondent: Ms K Pal, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Bangladesh and his date of birth is 16 July 1985. The Appellant made an application for a derivative residence card pursuant to the Immigration (European Economic Area) Regulations 2006. That application was refused by the Secretary of State in a decision of 17 September 2015 and the Appellant appealed against that decision. His

appeal was dismissed by Judge of the First-tier Tribunal Coll, in a decision promulgated on 23 December 2016, following a hearing at Taylor House on 13 December 2016. Permission was granted by First-tier Tribunal Judge Page on 10 July 2017. At the hearing before me the Appellant did not attend and JKR Solicitors wrote to the Tribunal on 15 September 2017 stating that they were no longer representing him. The Appellant emailed the Tribunal at 10:21 am on the morning of the hearing before me indicating that he is unable to pay his solicitor and therefore he would not be represented at the hearing and that he is feeling “uncomfortable and unable to represent himself at the hearing”.

2. The grounds of appeal are twofold. The first ground is that the judge erred in refusing to adjourn the hearing at the request of the Appellant which denied him a fair hearing. It is asserted in the grounds that he was suffering from “severe medical issues”. It is asserted that he had an appointment to see a physiotherapist on the same day as the hearing.
3. The second ground challenges the substantive decision of the judge and asserts that the judge did not take into account that the Appellant’s grandfather, Mr Miah “is not only reliant for his day to day life but also significantly reliant on the Appellant for emotional supports due to separation from his family”. It is further asserted that the judge’s assessment of the evidence relating to Mr Miah is flawed.
4. The judge considered the request for an adjournment. Before the judge there was a letter from JKR Solicitors of 30 November 2016 which reads as follows:

“We have instruction to inform the Tribunal that Mr Hasnat is having a severe a medical issue that makes him unable to move well. Due to this, he was referred by his GP to attend a physiotherapy appointment at Barts Health NHS Trust. He is awaiting to see the physiotherapist soon at Barts Health NHS Trust and whereas his physical condition would be reviewed. Please refer to the enclosed letter dated 24 November 2016 in this regard.

Because of severity or his medical condition, our client is having to see his GP constantly and the quickest available appointment is found and booked with Dr Zare-Azirani Mitra on Tuesday 13<sup>th</sup> December 2016 at Harford Health Centre, London. Hence, Mr Hasnat finds it very difficult to attend the hearing that is scheduled on 13<sup>th</sup> December 2016 and he has instructed us accordingly to request for an adjournment.”

5. There was a letter before the judge from Barts Health NHS of 24 November 2016 confirming that they had received a referral for the Appellant to attend a physiotherapy appointment. There was a document which is an appointment confirmation indicating that the Appellant had an appointment with his GP, Dr Mitra Zare-Azirani, on 13 December 2016 at 10:30am. There was a copy of a prescription which indicates that on 12 November 2016 the Appellant was prescribed co-codamol. The judge in

respect of the documentation and the application made findings at paragraphs 9 and 10:

“9. I considered the request. The Appellant’s case was that he had developed a physical problem such that he could not move. He had attended his GP and been referred for physiotherapy at Bart’s Hospital. He had only been able to obtain a further appointment with his GP on the date of the hearing and must attend that instead of the hearing.

10. Having considered the overriding objective in Rule 2 and Rule 28 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, I decided not to adjourn the hearing. I have been provided with no medical evidence of the Appellant’s condition and that he is unfit to attend. I would have expected to be given a discharge sheet from A & E or a GP letter or GP record. I do not accept that a letter from Bart’s Hospital asking the Appellant to make a physiotherapy appointment and the fact of his appointment with his GP on 13 December 2016 are sufficient.”

6. Before the judge was a referral for physiotherapy, evidence that the Appellant takes painkillers and that he had made an appointment with his GP on the day of the hearing. There was no evidence before the judge that this Appellant was unfit to attend the hearing or that there was any necessity to see his GP on the day of the hearing, rather than on another occasion.

7. The evidence was properly considered by the judge who was manifestly entitled to conclude that, in the absence of medical evidence that the Appellant was unfit to attend the hearing, the matter should proceed in his absence. It is asserted that the Appellant has a severe medical issue but there was simply no evidence of this before the judge. The grounds are undermined by the assertion the Appellant had an appointment for physiotherapy on the day of his hearing whereas the application before the judge was on the basis that he had been referred for physiotherapy and he had an appointment with his GP on the date of the hearing. In any event, the grounds do not establish that the Appellant had a serious health condition rendering him unfit to attend the hearing. They do not establish that has been a procedural irregularity or unfairness caused to the Appellant following the judge’s decision to proceed in his absence. I have further considered the fairness issue in respect of ground 2. I have considered whether or not his attendance would have made any difference to the outcome.

8. The second ground of appeal is similarly lacking in substance. The judge made the following findings in respect of the grandfather’s health;

“27. Turning to the grandfather I find that he has type 2 Diabetes for which he is prescribed Metformin (500 mg. one per day) and Pigolitazone (30 mg. one per day) (see GP record at **RB H1**). The Appellant has not provided any letters from or referrals to specialists. Using my expertise as a judge in the Social

Entitlement Chamber, I find that he is on standard medication to control his diabetes and he is cared for by his GP. As a result, I find that there is no evidence to justify that the grandfather would need any help from the Appellant with his mobility or care.

28. With regard to the grandfather's osteoarthritis, there are no x-rays or MRI scans in the papers. Furthermore, there are no letters from or referrals to specialists such as orthopaedic surgeons or Pain Management. Furthermore, the grandfather is on first line (standard, low level) painkillers (paracetamol 500 mg. one or two tablets four times a day). I find that there is therefore no medical evidence to support the grandfather's osteoarthritis is severe and that he has mobility and care needs as a result.
29. The grandfather had bilateral cataract extractions and implants in 2008. There are no letters from specialists to suggest that these operations were not successful or that the grandfather has visual impairments such that he would need assistance from the Appellant.
30. The grandfather has problems with constipation for which he takes lactulose and docusate. There is no medical evidence (in the form of a GP letter, or a specialist letter or report) to indicate that the grandfather has problems with (faecal or other) incontinence. There is no medical evidence concerning any urinary problems as claimed by the Appellant and no reference to this in the GP records. I therefore find that he does not need assistance from the Appellant with managing his toilet needs.
31. The grandfather has obesity. Again there is no medical evidence to establish that this would justify any assistance in mobilising or care from the Appellant.
32. The Appellant refers to hypertension. There is no reference to any medication for this in the GP records and no medical evidence concerning it.
33. I have considered all the medication listed in the GP records above save for Tadalafil, which had been on repeat prescription since 30 December 2014. I find that information in the public domain shows that this is a medicine for erectile dysfunction. I note that the date when this started being on repeat prescription is after the date on which the Appellant claims that the second wife left the grandfather's home. I find on the balance of probabilities that the grandfather would not have sought a prescription at that date for erectile dysfunction unless the second wife had still been living with him. I therefore do not accept that the second wife left home (abandoning the grandfather to the Appellant's care).
34. I also note that I have not been provided with any other evidence supporting the grandfather's alleged needs. There is for instance no care plan from Social Services, no evidence of his being in receipt of Disability Living Allowance or Personal Independence Payment and no Occupational Therapy assessment.

35. In any event, I find that the grandfather was and is not totally or even partially dependent on the Appellant for help and support (in respect of either mobilising or the activities of daily living).
  36. Consequently, I find that the grandfather has no care needs (in terms of daily living or mobility) and that the Appellant is not his Primary carer or indeed his carer.
9. The judge had before him the medical evidence in respect of the Appellant's grandfather and the Appellant's witness statement. Having considered the medical evidence, the judge made extensive findings. He did not accept the Appellant's grandfather's medical condition as asserted by the Appellant and there is no properly articulated challenge to this. Significantly he did not accept that the Appellant was his grandfather's carer. He concluded, on the basis of the medical evidence, that the grandfather did not need a carer. The findings of the judge are grounded in the evidence and adequately reasoned.
10. Had the Appellant attended the hearing, the grounds do not explain how he could have improved upon the medical evidence. They do not establish that his attendance would have had any impact on the outcome of the case. The Appellant's appeal could not succeed without him establishing that his grandfather's medical condition was such that he needed a carer and the judge was entitled to conclude that the evidence before him did not establish this.

### **Notice of Decision**

11. There is no substance in the grounds of appeal. The decision of the judge was one that was open to him on the evidence and is lawful and sustainable. The decision to dismiss the Appellant's appeal is maintained.

No anonymity direction is made.

Signed Joanna McWilliam

Date 21 September 2017

Upper Tribunal Judge McWilliam