Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03138/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18 September 2017	**On 22 September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

[S K]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharma, Counsel, instructed by Cranbrook Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant in this case is a national of India born on [ ] 1986. The Appellant first entered the United Kingdom as a student on 25 December 2009, having been issued with a Tier 4 Student visa valid for a year from 14 October 2009. He made subsequent applications for leave to remain as a student but his leave expired following the exhaustion of appeal rights after 17 November 2011. The Appellant thereafter overstayed. On 6 August 2014 he was encountered during an immigration enforcement visit and was served with notice as an immigration offender and granted temporary release.

2. On 7 July 2015 the Appellant applied for leave to remain under the ten year route, viz. Article 8 private and family life. That application was refused on 17 November 2015. No appeal appears to have been lodged against that decision and on 19 January 2017 the Appellant was detained when he reported.

3. Representations were received on his behalf on 2 February 2017. These were rejected on 10 February 2017. On 12 February 2017 the Appellant was served with removal directions scheduled for 18 February 2017 and two days after that on 14 February 2017 the Appellant claimed asylum. He received a screening interview on 28 February 2017. On 9 March 2017 the Appellant was due to be interviewed substantively in respect of his asylum claim but he declined to take part in the interview, which was then rebooked for 14 March 2017. On 13 March 2017 the Appellant's solicitor requested that the interview be cancelled and the Appellant be released from detention. The following day, the day of the interview, the Respondent wrote to the Appellant's solicitor informing them that the interview would proceed. However, the Appellant refused to be interviewed and his solicitor did not attend.

4. A decision was made to refuse asylum on 24 March 2017. The Appellant appealed against that decision and his appeal was listed for hearing at Harmondsworth on 24 April 2017. Two weeks prior to the appeal hearing on 10 April 2017 the Appellant's solicitors made an application for an adjournment. The basis of that application provides as follows:

> *"Our client is currently awaiting a full medical report from medical expert witness Alliance* [part of the sentence is missing] *confirm it will take up to four to five weeks to obtain a complete medical report on the medical psychiatric condition of our client if he is to return to India."*

Reference is then made to paragraph 8.36 or 8.38A of the Tribunal Guidance Note on Case Management Review Hearings relating to adjournment requests. The letter then continues:

> *"An expert report in the case would help determine how removing the client from the United Kingdom would effect his health be it mental or physical."*

The adjournment request was refused on 19 April 2017 *"because it is not clear how a medical report will assist the Appellant. It is noted that he said at his screening interview that he was fit and well and not taking medication."*

5. The adjournment request was renewed before the First-tier Tribunal Judge at the hearing on 24 April 2017. The judge deals with this as follows:

> *"21. The second was a renewed application for an adjournment to obtain a psychiatric report. I enquired what it was that was said to*

need for a report. It was atrocities witnessed as a child in the 1980s which could go to credibility, and there had been no asylum interview as yet. The Secretary of State said that the Appellant was obstructive, but the Appellant was happy to give an interview, though not while in detention. I enquired as to whether that was a legitimate position for an illegal immigrant to take. Counsel observed that it might be that mental health reasons were the cause of this: but the main reason for the application was that there was only a full refusal letter on the morning of the hearing.

...

25. I declined to adjourn the appeal on the basis of the seeking of a medical report. It was too late, and not raised before. The objections given by the judge refusing the application were sound, as were those of the Home Office Presenting Officer",

who had opposed the adjournment request, bearing in mind:

"22. The Appellant had made applications since 2009 on the basis of being a student in the UK … There had been no mention of a medical report before the recent request, it was not said in the screening interview and there was no mention of medical treatment being sought, ever."

6. The judge then went on to dismiss the appeal on the basis:

"63. This is a fabricated claim. The Appellant has made multiple applications and lodged two appeals. Even when arrested and detained he still made no application for asylum and did so only after removal directions were made, and with the intention of frustrating them, as he admitted. The perusal of the evidence given in the hearing shows that wherever the Appellant's claim is examined in any detail the contradictions were revealed. When he dealt with one issue examination of the claim in the light of that response opened up even bigger chasms of credibility."

7. It is apparent from the papers and from the judge's decision that the basis of the Appellant's claim is that although he is a Hindu he was a supporter of the Khalistan movement as was his father and his family, who had been treated as traitors by the wider family because this is a Sikh organisation. This is set out at [30] of the judge's decision. The Appellant asserted that his father had been arrested in 1984 by police and beaten and detained, that during his childhood *"he witnessed violence and harassment from the police his wider family and local Hindus"*. He stated that in 2008 he was detained with friends and tortured until they accepted they were connected with the Khalistan movement and the Pakistani Intelligence Agency. They denied the allegations and were released after one week. As a consequence, in 2009 his father arranged through an agent for the Appellant to leave India to come to the UK to study and start a fresh life.

8. It is further recorded the Appellant stated:

> *"30.4. … He was scared that if he told of his political affiliation with the KM to the authorities or anyone in the UK he might find himself in difficulty.*
>
> *30.5. After living his life peacefully in the UK for the last eight years he forgot about his horrible past and started believing that his life in the UK would continue. He did not approach the Home Office about this before, as he was scared that if the Home Office sent him back to India he would have to face persecution.*
>
> *30.6. He refused to be interviewed by the Home Office in detention as it brought back the memories of the violence that he had seen all his life in India."*

9. An application for permission to appeal was made on the basis that the judge had erred materially in law in failing to adjourn the appeal. The grounds of appeal assert at [6] that the decision falls foul of the overriding objective and the Presidential Guidance set out in Nwaigwe [2014] UKUT 00418, which sets out that the test to be applied is that of fairness rather than whether the Tribunal acted reasonably.

10. The grounds assert at [7]:

> *"7. It is submitted that the expert report was intended to go to the Appellant's credibility and that this is not a case in which there has been a delay on behalf of the Appellant or those he instructed; the decision under challenge being dated 24 March 2017 and the hearing taking place on 24 April 2017. The report would have gone to the crux of the Appellant's credibility in this case and the failure to grant an adjournment amounts to a material error given that the First-tier Tribunal Judge then goes on to make a number of adverse credibility findings and to ultimately conclude that the claim was fabricated."*

11. A challenge was also brought to the judge's finding at 66 where he stated:

> *"66. I have considered and rejected the implicit suggestion that the Appellant has something akin to posttraumatic stress disorder so that he suppresses consideration of these trauma. He is simply untruthful to seek to remain in the UK."*

12. [12] of the grounds asserts that the finding at [66] amplifies the error in failing to adjourn the appeal because, in the absence of a medical report commenting on his mental health and without any medical knowledge or jurisdiction, the judge rejected the Appellant's claim that he suffers from PTSD.

13. Permission to appeal was granted by Upper Tribunal Judge Blum on 17 July 2017 on the following basis:

"It is arguable that the First-tier Tribunal Judge erred in law in not granting an adjournment to enable a medical report to be obtained in circumstances where the First-tier Tribunal Judge rejected the 'implicit suggestion' at [66] that the Appellant was suffering PTSD which he sought to advance by way of explanation for the lack of candidness in his previous applications."

Hearing

14. At the hearing before me I heard submissions from Mr Sharma on behalf of the Appellant and Mr Tarlow on behalf of the Respondent. Mr Sharma sought to rely on the fact there was a very short period of time between the Respondent's decision and the appeal hearing during which time the Appellant was in detention and had been in detention for several months. There was insufficient time to prepare his appeal fully and the Appellant needed medical support. Mr Sharma submitted that the medical evidence was material to the issue of delay as it was clear from [34] of the judge's decision that the Appellant had been frightened in India and he was scared as to what would happen to him if he made his claim known in the United Kingdom.

15. Mr Sharma submitted that the crux of the credibility finding was the lateness of the making of the asylum claim and the report could have dealt with this. He also sought to rely on the fact that at [66] the judge's finding was made without any medical evidence being before him and he relied on the Presidential Guidance decision of Nwaigwe (op cit).

16. In his response, Mr Tarlow sought to rely on the Rule 24 response. This is dated 27 July 2017 and asserts that the judge was entitled to refuse an adjournment request in order to obtain medical evidence because it appeared at [22] that this was only raised at the hearing and had not been raised previously. However, that is not factually correct in light of the fact that a written application for an adjournment was made on 10 April 2017 and rejected. Therefore the Rule 24 response does not take the Respondent's case any further.

17. Mr Tarlow also sought to rely upon the Appellant's answers as given in the screening interview at section 2, part 2, health/special needs, where it is recorded that the Appellant stated that he was fit and well, he was not on medication, and at paragraph 2.3 when asked *"is there anything else you would like to tell me about your physical or mental health?"* it appears to be recorded that the Appellant said that he was "*mentally okay*". Mr Tarlow pointed out the fact that this interview took place on 28 February and the hearing before the judge was on 24 April, therefore approximately only eight weeks later.

18. Mr Tarlow submitted that the judge's findings at [25] and [26] as to his reasons for declining to adjourn the appeal were open to him. Those reasons were adequate. There was no material error in the decision.

19. In his response Mr Sharma pointed out that the basis of the application for permission to appeal was a substantive, not a reasons challenge, i.e. that the judge erred substantively in failing to adjourn the appeal.

20. I reserved my decision, which I now give with my reasons.

Decision

21. I have given careful consideration to the evidence in support of the appeal, the appeal decision of First-tier Tribunal Judge Housego, the grounds of appeal, the grant of permission, the screening interview and the previous adjournment request of 10 April 2017 and the decision refusing to grant that adjournment request. I have also considered the decision in Nwaigwe (op cit).

22. In light of the evidence before me, I have concluded that there is no material error of law in the decision of First-tier Tribunal Judge Housego. The Appellant has resided in the United Kingdom since 2009. At no stage prior to 10 April 2017 was there any indication of any issues relating to his mental or physical health. In his screening interview of 28 February 2017 he expressly disavowed any issues with his physical or mental health and he declined to undergo a substantive interview and thus missed the opportunity to put any issues forward at that stage. That was his own choice.

23. The terms of the adjournment request of 10 April 2017, this make no reference to how it is that any medical report could assist in respect of the overriding objective and a proper determination of the appeal. It simply asserts that an expert medical report would help determining how removal of the Appellant from the United Kingdom would affect his health. It does not assert that such a report would be material in assessing the delay in making an asylum claim or the credibility of that claim, both of which were clearly very much in issue in light of the terms of the Secretary of State's refusal decision of 24 March 2017.

24. Whilst submissions were made before the First-tier Tribunal Judge and additional reasons given as to why such a report would be material, I consider that the reasons provided by the judge, in particular at [25] of his decision, were adequate to justify his refusal to adjourn on that basis. There was no indication either in the Appellant's own words at the screening interview, nor in the adjournment request of 10 April 2017, nor before the judge that the Appellant was suffering from a mental health condition. In those circumstances I find the submission from Counsel recorded at [21] that it related to atrocities witnessed as a child in the

1980s which could go to credibility was far too speculative a basis upon which, absent any evidential support for that submission, the judge was obliged to adjourn the appeal.

25. Similarly, in respect of the judge's impugned finding at [66], the judge there rejected the implicit suggestion that the Appellant has something akin to posttraumatic stress disorder which has impacted on his ability to put his case forward, I find the judge was entitled to reach that conclusion on the basis of an absence of any evidence before him or any indication by the Appellant that this was, in fact, the position.

26. I do not consider that the decision in Nwaigwe means that in order for an appeal to be fair it is necessary to accede to an adjournment request in each and every situation. Whilst the turnaround in this case between the Respondent's decision and the appeal may have been relatively short, this is not a case where the Appellant had just arrived in the United Kingdom and I therefore do not accept the analogy at [8] of the grounds of appeal that this can be compared to the Detained Fast Track scheme, bearing in mind that the Appellant had resided continuously in the United Kingdom since 2009.

27. For the reasons set out above I find no material error of law in the decision of First-tier Tribunal Judge Housego and that decision is therefore upheld.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

I have dismissed the appeal and therefore there can be no fee award.

Signed Rebecca Chapman Date 21 September 2017

Deputy Upper Tribunal Judge Chapman