



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

Appeal Number: PA/04991/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 15 November 2017**

**Decision & Reasons
Promulgated
On 30 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**N K
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Razzaq-Siddiq of Counsel instructed by Universal Solicitors

For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Kainth promulgated on 11 July 2017.
2. The Appellant claims to be a Bihari formerly habitually resident in Bangladesh, and has claimed to be stateless. The Respondent considers that he is a citizen of Bangladesh. His date of birth is 16 April 1981.
3. The Appellant's immigration history is set out at paragraph 9 of the decision of the First-tier Tribunal. Given the nature of the issues before

the Upper Tribunal it is not necessary to go into further detail. Suffice it to say that this was an asylum claim and I have it in mind that the standards of fairness and scrutiny that are required in consequence are of the highest order.

4. The Appellant did not attend the hearing before the First-tier Tribunal on 22 June 2017 at Harmondsworth. He was represented on that occasion by Mr A Khan of Universal Solicitors. Mr Khan sought an adjournment on the basis of the Appellant's non-attendance, and also on the basis that his firm had only very recently been instructed by the Appellant. The matter is rehearsed in the Decision of the First-tier Tribunal in this way at paragraph 11:

"The appellant was initially represented by Mr Khan of Universal Solicitors. The appellant was not in attendance. Mr Khan made an application for an adjournment citing two grounds namely:

- (1) that his firm had only recently been instructed as of 19 June 2017 and had not had sight of papers nor had they been in a position to take instructions from the appellant;*
- (2) that the appellant was not in attendance, a friend of the appellant's had sent Mr Khan a text message stating that the appellant was in an unknown hospital. Mr Khan stated that he had a photograph on his mobile telephone of the appellant on a hospital bed."*

5. The application for an adjournment was opposed by the representative for the Respondent.
6. The First-tier Tribunal Judge refused the application for an adjournment and proceeded with the hearing. Mr Khan had indicated during the course of the submissions in respect of the adjournment application that he was not instructed to represent the Appellant on a substantive appeal - his instructions and representation were limited to the purpose of requesting the adjournment. The adjournment having been refused, Mr Khan withdrew from further involvement in the proceedings. In this regard I note that the Judge records at paragraph 17: *"Mr Khan was advised that the Tribunal was more than content to put the matter back until the afternoon in order that he could take instructions"* and that Mr Khan *"declined the offer."* The Judge went on to consider the substantive issues in the appeal and dismissed the appeal on asylum grounds, humanitarian protection grounds and human rights grounds.

7. The Appellant sought permission to appeal to the Upper Tribunal. The grounds in support of the application in the main part focus on the issue of procedural unfairness by reference to the decision to refuse the application for an adjournment. It was also argued - in very general terms - that the substantive decision was also flawed.
8. Permission to appeal was refused in the first instance on 3 August 2017 by First-tier Tribunal Judge Chohan. However, on a renewed application Upper Tribunal Judge McWilliam granted permission to appeal on 14 September 2017. Judge McWilliam considered that it was arguable that the First-tier Tribunal Judge “*did not consider the issue of fairness in respect of the adjournment application claim, with reference to difficulties in making contact with/obtaining documents from the previously instructed solicitors*”. In this context the grant of permission to appeal includes the following:

“The Appellant and his representative are expected to attend the hearing with evidence relating to the issue, preferably from Blakewells Solicitors, but also from the current representatives, in order to determine what efforts they/the Appellant has made to contact Blakewells and whether the Appellant has cooperated with the preparation of his case e.g. whether Blakewells took a statement of evidence from him prior to the hearing before the FtT. There should be ample time to allow the representatives to obtain the Appellant’s file from Blakewells before the hearing as this may assist the UT to decide whether or not there has been unfairness.”

9. I pause to note that Judge McWilliam did not grant permission in respect of that aspect of the application for the adjournment that related to the Appellant’s non-attendance, nor was permission granted in respect of those aspects of the grounds of challenge that - as I have said above, in a general and non-specific way - purported to attack the Judge’s substantive conclusions on the appeal. In this latter regard I note in particular that in the absence of the Appellant, in the absence of any evidence further to the evidence contained in the Respondent’s bundle, and in the absence of any oral submissions, whilst it was not inevitably the case that the First-tier Tribunal would uphold the Respondent’s decision it is hardly surprising that it did so. In any event it seems to me quite clear that the grounds of challenge raise no arguable error of law in this regard, and to that extent Judge McWilliam was quite right not to grant permission to appeal in that regard.
10. Similarly, for completeness and for the avoidance of doubt, it seems to me that there could be no meaningful challenge to the aspect of the adjournment decision to proceed in the absence of the Appellant.

Paragraphs 15 and 16 of the Decision of the First-tier Tribunal are particularly germane in this regard and are in the following terms:

“15. The second ground for an adjournment was on the basis that the Appellant was in hospital. Mr Khan was unable to explain which hospital, for what reason or the reason for hospitalisation. He was afforded the opportunity of taking further instructions and the matter was put back. When Mr Khan returned, he stated that he was not in a position to add anything further but repeated his request for an adjournment.

16. The Tribunal retired to consider the application which was refused. There was a complete absence of credible information with respect to the absent Appellant. He had earlier made an application for an adjournment which was refused. He was fully aware with respect to the reasons as to why that was the case. This in my assessment of the application was simply a further attempt to frustrate the proceedings.”

11. In circumstances where even the Appellant’s own representative was unable to articulate the reason why the Appellant was unable to attend the hearing beyond the general assertion that he had been taken to hospital - and even that assertion articulated without any meaningful particulars such as cause of hospitalisation or place of hospitalisation - it seems to me uncontroversial and inevitable that the Tribunal should have reached the conclusion that no proper reason for non-attendance had been provided and that in the circumstances it was appropriate to proceed in the absence of the Appellant.
12. Moreover, it is to be noted that since the date of the hearing before the First-tier Tribunal no evidence has been provided to verify the Appellant’s claimed incapacity on 22 June 2017.
13. Be that as it may, as I have indicated, these matters - in respect of the substantive decision and in respect of the refusal to adjourn in the absence of the Appellant - are not matters with which the Upper Tribunal is now jurisdictionally seized. I make the foregoing observations only by way of completeness and for the avoidance of any doubt that might remain in the Appellant’s mind, or his advisers’ mind, with regard to these issues.
14. It is against this background that I turn to the challenge upon which Judge McWilliam granted permission to appeal. The First-tier Tribunal Judge dealt with the adjournment request in this way, at paragraph 14:

“With respect to the first ground requesting an adjournment, after a short recess the application for an adjournment was refused. This was because the Appellant had engaged the services of Bakewell’s Solicitors whose details appeared on the appeal form which was signed and dated 29 March 2017. The said firm under cover of 12 June 2017 requested an adjournment stating that the Appellant was a practising Muslim and was fasting in observation of the holy month of Ramadan. That if he was to give evidence it could be detrimental to his health. They requested an adjournment after 27 June 2017. That application was refused on the basis that no evidence of ill-health had been produced and that fasting did not require adjournment of the hearing. Under cover 19 June 2017 Universal Solicitors wrote to the Tribunal office stating that they were now representing the Appellant in substitution of his earlier representatives Blakewell Solicitors. Universal Solicitors made reference to the Appellant attempting on more than one occasion to make contact with Blakewell Solicitors but with little success. There was an accompanying witness statement from the Appellant dated 19 June 2017. The Appellant was granted bail as of 16 June 2017. In the Appellant’s witness statement he made reference to not being aware as to whether or not Blakewell had submitted any papers on his behalf. As a consequence of not being able to speak with Blakewells or obtain documentation from them, he instructed Universal Solicitors. He came to be aware that the specific individual that he had been in contact with at Blakewells was now out of the country on emergency matters. He requested an adjournment. Mr Khan stated that he did not have a Respondent’s bundle. A copy was provided on the day of the hearing which he subsequently returned. Mr Khan was invited to explain why his firm had agreed to represent the absent Appellant when they were not in possession of papers nor had they taken instructions. Mr Khan explained that he had agreed to represent solely for the purposes of requesting an adjournment. The application to adjourn was refused.”

15. Mr Razzaq-Siddiq acknowledges that no evidence has been filed in the Tribunal pursuant to the directions of Judge McWilliam contained in the grant of permission to appeal. Moreover, he indicated that he was not in a position to offer to the Tribunal any explanation for the failure to provide any of the evidence that Judge McWilliam so plainly considered would be relevant to considering the fairness of the decision to refuse the adjournment. Mr Razzaq-Siddiq also acknowledged in due course that notwithstanding that Universal Solicitors had been instructed since 19 June 2017, nothing further had been filed with the Tribunal at any point in respect of the substance of the Appellant’s asylum claim - and to that end nothing had been filed pursuant to the standard Direction issued in this case on 21 September 2017 alerting the Appellant that he should be prepared to proceed before the Upper Tribunal to a substantive remaking of the decision in the appeal in the event of a finding of error of law, and that any further evidence should be filed accordingly.

16. Mr Razzaq-Siddiq advanced a short and simple point. He invited the Tribunal to note that Universal Solicitors had only been instructed two days prior to the hearing before the First-tier Tribunal, and invited the Tribunal to consider whether 48 hours was an adequate time in which to make preparations for the appeal. He invited the Tribunal to conclude that it was not.
17. In my judgment this submission is to miss the point. The issue was not whether Universal Solicitors had had adequate opportunity to prepare the appeal, but whether the Appellant had had adequate opportunity to prepare his case or otherwise to be represented at the hearing. Clearly he had had the benefit of representation since March 2017 when his Notice of Appeal had been lodged. In the ordinary course of events it might be expected that his representatives would have set about preparing his appeal in a timely and diligent fashion. If, closer to the hearing date, he had then decided to change representatives then in the ordinary course of events it might be expected that such change would be handled fluently and without difficulty.
18. It is the Appellant's suggestion that this was not the case and that his initial representatives, Blakewells, had let him down; and that in turn, when he changed representatives, this left his current representatives, Universal Solicitors, in a near impossible position. The difficulty is that the Appellant has singularly failed to provide any supporting evidence to establish the premises of his argument. Indeed, Mr Razzaq-Siddiq not only acknowledges, as I have indicated, that there is no such supporting evidence before the Tribunal, but also indicates that he is not in a position to offer any sort of explanation for the absence of such material. This is remarkable. Bearing in mind that Universal Solicitors continue to represent the Appellant it might be thought that they at least would have been in a position to provide something by way of response to the observations of Judge McWilliam in respect of their own dealings with the matter and their own correspondence with Blakewells; but, as I say, nothing of that sort has been provided.
19. I also note in this context Ms Willocks-Briscoe's observation, which I consider to be well-made, that the fact that Blakewells had made an application for an adjournment on behalf of the Appellant on 12 June 2017 significantly undermines his claim not to have been able to be in communication with them. It is apparent that he instructed them to make an application on the grounds set out within that application and rehearsed at paragraph 14 of the First-tier Tribunal Judge's decision. This does not sit well with the claim that he was in substance unable to communicate with his solicitors.

20. For all these reasons - and with all due respect to Mr Razzaq-Siddiq, whom it seems to me has presented the case as well as he is able with the limited materials available to him - I find that the Appellant has quite simply failed to put anything before the Tribunal that reinforces the idea that he was let down by either representatives. In the circumstances it seems to me absolutely clear that as of the date of the hearing before the First-tier Tribunal the Appellant had had ample opportunity to prepare his case for appeal, with or without the benefit of representatives, but as it happens, seemingly throughout with representatives.
21. Accordingly, I can identify no procedural unfairness in refusing to adjourn the case, whether by reference to the preparedness or otherwise of the Appellant's representatives and documentation, or by reference to the Appellant's non-attendance.

Notice of Decision

22. There was no error of law in the decision of the First-tier Tribunal which, accordingly, stands.
23. The Appellant's appeal remains dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing

Signed:

Date: **29 November 2017**

Deputy Upper Tribunal Judge I A Lewis