



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: PA/13359/2016**

**THE IMMIGRATION ACTS**

**Heard at Manchester Piccadilly  
On 28 June 2017**

**Decision & Reasons Promulgated  
On 06 July 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**TANU SHARMA**

**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Khan of Prestige Solicitors

For the Respondent: Mr G Harrison Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Appellant was born on 6 May 1986 and is a national of India.

3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Davies promulgated on 16 January 2017 which dismissed the Appellant's appeal against the decision of the Respondent dated 25 November 2016 to refuse the Appellants application for protection status.

#### The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Davies ("the Judge") refused an adjournment request made by the Appellants legal representative and dismissed the appeal against the Respondent's decision.
6. Grounds of appeal were lodged arguing that there was procedural unfairness in the Judge's decision to refuse and adjournment request.
7. On 10 April 2017 First-tier Tribunal Judge Page gave permission to appeal.
8. At the hearing I heard submissions from Mr Khan on behalf of the Appellant that
  - (a) Mr Khan had represented the Appellant at the hearing before the First-tier Tribunal and had produced the 'Red Book' which disclosed that the Appellant was suffering problems with her pregnancy and had done so for some time. The date of birth for the baby was within 2 weeks of the date of hearing, 23 January 2017.
  - (b) When asked by me for the Red Book so I could confirm the information that he was providing he stated that he was unable to produce it as the NHS retained this document.
  - (c) When asked by me why there had been no application for an adjournment prior to the date of hearing he was unable to give an explanation.
9. On behalf of the Respondent Mr Harrison submitted that :
  - (a) He relied on the Rule 24 notice.
  - (b) The situation faced by the Judge had to be considered in the context of there having been no attendance at the CMR by either the Appellant or her

Representative and that no adjournment request having been made prior to the hearing date.

- (c) In normal circumstances given the date of birth of the child an application for an adjournment may have been anticipated but none was made.

### **Finding on Material Error**

10. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
11. Rule 4(3) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 gives the power to adjourn or postpone a hearing. This power must be exercised in accordance with the overriding objective which is found in Rule 2 of dealing with cases fairly and justly and having regard to any other relevant considerations. Rule 28 gives the power to proceed with a hearing in the Appellants absence if they have been notified of the hearing and it is in the interests of justice to do so.
12. The decision of the Upper Tribunal in Nwaigwe (adjournment; fairness) [2014] UKUT 00418 (IAC) although based on the 2005 Procedure Rules provides clear guidance and emphasizes the importance of the test of fairness and the question of whether a party will be deprived of a fair hearing if an adjournment is refused.
13. Each application to adjourn must be considered on its own merits, examining all the factors brought to the Tribunal's attention. When reaching a decision on such an application, the Tribunal may also have regard to information already held and its own special expertise (see rule 2(2)(d)).
14. Factors weighing in favour of adjourning an appeal, even at a late stage in proceedings, include.
  - (a) Sudden illness or other compelling reason preventing a party or a witness attending a hearing. Normally such a reason should be supported by medical or other relevant evidence, unless there has been insufficient time to obtain such evidence. However, where there is no likelihood that the party will be able to attend a hearing within a reasonable period, a hearing may proceed in absence where the tribunal considers that this is in the interests of justice in terms of rule 28.

(b) Late changes to the grounds of appeal or the reasons for refusal which change the nature of the case. The terms of rules 19(7), 23(2)(b) and 24(2) should be taken into account, as appropriate, when considering changes to the grounds or reasons.

(c) Where further time is needed because of a delay in obtaining evidence which is outside the party's control, for example, where an expert witness fails to provide a report within the period expected.

15. The following factors, where relevant, may weigh against the granting of an adjournment.

(a) The application to adjourn is not made at the earliest opportunity.

(b) The application is speculative, such as, for example, a request for time for lodging further evidence where there is no reasonable basis to presume that such evidence exists or could be produced within a reasonable period.

(c) The application does not show that anything material would be achieved by the delay, for example, where an appellant wants more time to instruct a legal representative but there is no evidence that funds or legal aid is available.

(d) The application does not explain how the reason for seeking an adjournment is material to the case, for example, where there is a desire to seek further evidence but this evidence does not appear to be material to the issues to be decided.

(e) The application seeks more time to prepare the appeal when adequate time has already been given. In such circumstances, the Tribunal may take into consideration a failure to comply with directions. However, a failure to comply with directions will not be sufficient of itself to refuse an adjournment.

16. It is a trite observation therefore that there is no automatic entitlement to an adjournment or that proceeding in the Appellants absence deprives them of a fair hearing and any such application or argument must be supported by evidence in accordance with the Practice Direction and the guidance of caselaw.

17. In this case the Appellant was pregnant which is a condition not an illness and as such she was not automatically entitled to an adjournment unless there was clear

evidence before the Judge to show that her pregnancy had caused her problems that made her unfit to attend court on the date of hearing and that proceeding in her absence would not be fair and just.

18. The Judges record of the application made appears at paragraph 20 and the basis of the application was that the Appellant was pregnant and due to give birth in a few weeks. The ROP notes 'Having difficulty with pregnancy -letters produced'. The Judge therefore records that he asked Mr Khan if he had:

*'any evidence to indicate why the Appellant had not attended the hearing today. He produced letters and forms to indicate she was pregnant **but nothing more.** No evidence was produced to me to indicate that the Appellant was unfit to attend the hearing due to her pregnancy.'* (my bold)

19. Mr Khan argued before me that the pregnancy had caused her problems from her mid trimester and the Judges note appears to confirm that there was reference to 'problems'. However this argument makes clear that this was not a case of a 'sudden' illness and therefore the fact that he was unable to explain why no application had been made for an adjournment prior to the date of hearing supported by medical evidence was a factor of some weight.

20. Mr Khan also argued before me that he had produced the Appellants 'Red Book' to the Judge and that this showed there had been problems with the pregnancy. The Red Book, or Personal Child Health Record, is a document I am very familiar with. When asked by me therefore why the Appellant was unable to produce this document before me, given that it is the *personal* health record of the child retained by the parent, Mr Khan suggested rather surprisingly that it had been retained by the NHS but could give no explanation why that was the case with this Appellant and why he had not obtained copies of what he claimed was contained within that book to support his application. There is moreover no record in the decision that the Red Book was produced simply that the documents produced confirmed she was pregnant.

21. The Judge did take into account when considering the application (paragraph 19) that although legally represented at the time of the CMR neither the Appellant nor her legal representative had attended at that hearing or indicated that there would

be any issues that would affect the full hearing date that had been fixed and notified of as long ago as 6 December 2016. He would also have been entitled to take into account that her legal representatives had also been sent Directions on 23 December 2016 requiring them to serve their bundle 5 days before the hearing date and had not done so.

22. Before him therefore the Judge appeared to have had very clear evidence of a late claim for asylum followed by a wholesale failure to engage with the proceedings by the Appellant and her legal representatives at each stage of the process: this is a choice that is open to them.

23. The Judge went on to consider against this background in the absence of any evidence that the Appellant was unfit to attend the hearing whether the case could be justly disposed of and concluded that it could. He had the Respondents bundle which contained the Appellants interviews with the Respondent together with her witness statement and documents and photographs in support of her application and the refusal letter. I am satisfied on the basis of the evidence and history of the case before him there was no basis on which he could have concluded that proceeding in her absence deprived her of a fair hearing and he applied the dominant test as he was required to do of the case being dealt with justly.

## **CONCLUSION**

**24. I therefore found that no errors of law have been established and that the Judge's determination should stand.**

## **DECISION**

**25. The appeal is dismissed.**

Signed

Date 5.7.2017

Deputy Upper Tribunal Judge Birrell