



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/12970/2016

THE IMMIGRATION ACTS

Heard at Field House
On 31st July 2018

Decision & Reasons Promulgated
On 7 August 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

Tariq [R]
(Anonymity Direction Not Made)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr I Khan, instructed by Lincolns Solicitors

For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of a First-tier Tribunal Judge promulgated on 6th March 2018 in which he dismissed the appellant's appeal against the Secretary of State's refusal of an EEA Residence Card as the primary carer of a British citizen.
2. The appellant appealed arguing the judge erred in that he
 - (i) Failed to properly deal with the appellant's claim owing to a refusal to grant an adjournment as the appellant and his wife were absent

because of her illness. The appellant's witness statement indicated that she suffered with epilepsy and no medical evidence to support the adjournment application was produced because her illness occurred on the day of the hearing. It was asserted that the wife experienced fits and seizures and needed much support and assistance from the appellant. It was argued the judge failed to give due consideration to the independent psychotherapist report from Susan Pagella.

3. Permission to appeal was granted by First-tier Tribunal Judge Osborne who stated that it was arguable that live evidence from the appellant and sponsor might have been considerably more persuasive than the written evidence which was read by the judge.
4. At the hearing before me Mr Clarke conceded that there was unfairness in failing to adjourn for the attendance of the appellant and his wife. Mr Khan and Mr Clarke agreed the matter should be remitted to the First-tier Tribunal.
5. In concluding I find that the judge stated at [6] of his decision that '*the key evidence in this appeal would be the independent evidence of the medical condition and care needs of the appellant's wife*'. Although the judge noted the report of the psychotherapist and the written statements, he commented this was the 'only' evidence and nevertheless he would take it into account.
6. I can appreciate that little further evidence, specifically medical evidence, had been supplied since the previous decision of Judge Juss (who did acknowledge a GP letter referring to the wife's health conditions) and the judge was entitled to take that into account however I make these observations. First, the refusal of the adjournment, bearing in mind the said illness of the wife, did not afford the appellant and his wife the opportunity to attend to give live evidence such that the written evidence was not the 'only' evidence. Secondly, it would appear that Ms Pagella's report was given only limited weight because of the reliance on the wife's account. The adverse findings at [19] could have been informed and possibly alleviated by the evidence of the appellant's themselves. There was no opportunity to answer questions.
7. As explained in **Nwaigwe (adjournment: fairness)** [2014] UKUT 00418 (IAC), the test is one of unfairness. Bearing in mind the judge's criticisms stemmed from a lack of evidence, to adjourn at least once to allow for the attendance (or alternative care for the wife so that the appellant may attend) is a procedural unfairness and thus a material error of law.
8. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent

of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

9. For the rehearing I make the following directions:
- (i) **The appellant is to produce GP medical records and any further hospital medical records to evidence his wife's condition dating from January 2016. This evidence is to be served and filed with the Secretary of State and the Tribunal at least 14 days prior to the hearing in the First-tier Tribunal.**
 - (ii) **When notified of a hearing date he is to arrange alternative care for his wife so that he may at least attend the hearing in the event she is taken ill. Failing to attend a further hearing is likely to result in dismissal of his appeal.**

Signed *Helen Rimington*

Date 31st July 2018

Upper Tribunal Judge Rimington