



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/11090/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 29 January 2018

**Decision & Reasons
Promulgated**

On 22 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**MKA (BANGLADESH)
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Bhuiyan, Legal Representative, Haque & Houseman
Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals from the decision of the First-tier Tribunal (Judge Kevin Moore sitting at Taylor House on 13 October 2017) dismissing his appeal against the decision of the respondent to refuse to grant him indefinite leave to remain in the UK outside the Immigration Rules on compassionate or human rights grounds. The First-tier Tribunal made an anonymity direction, and I consider that it is appropriate that the appellant's anonymity is maintained for these proceedings in the Upper Tribunal.

The Reasons for the Grant of Permission to Appeal

2. On 24 November 2017, First-tier Tribunal Judge Boyes granted the appellant permission to appeal to the Upper Tribunal for the following reasons:
 - (2) The grounds assert the Judge erred by refusing to grant the adjournment.
 - (3) The grounds are arguable in light of the fact that the HOPO and the appellant agreed on the adjournment and the reasoning given by the Judge for continuing, it is arguable, could be better explained.

Relevant Background Facts

3. The appellant is a national of Bangladesh, whose date of birth is 20 January 1988. He arrived in the UK on 14 February 2010 with valid entry clearance as a student. He was granted leave to remain in this capacity on two occasions, culminating in a last grant of leave to remain which expired on 30 October 2015.
4. On 27 April 2016 the Secretary of State gave her reasons for refusing the application for further leave to remain. Firstly, he had sought a variation of leave to enter or remain for a purpose not covered by the Rules. Secondly, he had not accrued 10 years' continuous lawful residence in the UK, having only arrived in the UK on 11 February 2010. Thirdly, he did not satisfy the requirement of having no ties with the country to which he would have to go if required to leave the UK. He had spent the majority of his life in Bangladesh, and by his own admission his parents still lived in Bangladesh and he had returned to visit them between 13 May 2014 and 13 June 2014.
5. He advanced a medical claim under Articles 3 and 8 ECHR. He claimed that he had been treated for a cyst on his neck. His condition was not life-threatening. Whilst it was accepted that the healthcare systems in Bangladesh were unlikely to be equivalent, this did not entitle him to remain in the UK.
6. He also advanced a claim that his life would be endangered if returned to Bangladesh, due to political vengeance from the ruling political party. He claimed that, when he had returned to Bangladesh for one month in 2014, he had escaped being killed by sheer luck. He had not provided any evidence to substantiate his claimed fear. He had not claimed asylum when he arrived here in 2010, and he had not claimed asylum following his return to the UK in June 2014. His visit to Bangladesh in 2014 was not consistent with his claim to have a genuine fear for his life. If he wished to make a claim for asylum, he could do so by visiting the Asylum Screening Unit.
7. Two days before the scheduled hearing of the appellant's appeal at Taylor

House on 13 October 2017, the appellant's current solicitors faxed the Tribunal with a request for an adjournment, as they had only just been instructed by the appellant. The adjournment request was refused in writing. At the outset of the hearing before Judge Moore, Mr Bhuiyan renewed the adjournment request. He advanced two reasons.

8. The first was that he had only been provided with the notice of hearing and a copy of the refusal letter, and so he had been unable to prepare a bundle in order to assist the Tribunal. Accordingly, in the interests of justice, the matter should be adjourned. If the matter was not adjourned, he would not in a position to represent the appellant in his absence.
9. The second reason was that the appellant was absent. Mr Bhuiyan said that a friend of the appellant had had a fall last night, and the appellant had to spend all night at the hospital with his friend. He had tried to telephone the appellant this morning, but the appellant's mobile telephone was switched off. This was the reason for the appellant's absence.
10. As set out at page 3 of the Judge's decision, the Judge gave the following reasons for refusing the adjournment request: (a) there were no documents or evidence corroborating the appellant's claim that he had to spend all night at the hospital due to a friend's fall, and, even if that was the case, there was no good reason as to why he could not at least attend the hearing this morning; (b) the appellant had only two days before the hearing instructed new solicitors, and he had given no good reason as to why the service provided by his previous solicitors was unsatisfactory - it appeared to be the case that the appellant had instructed at least two previous firms of solicitors before deciding to instruct another firm of solicitors two days ago; (c) the appellant had had ample opportunity to provide a witness statement, and to instruct properly a firm of solicitors to provide an appropriate appellant's bundle, but had not done so; and (e) he could not be satisfied that there was any reasonable likelihood that the appellant might attend any future hearing if the matter was adjourned, and in any event an adjournment was not warranted, and would cause unwarranted delay. In all the circumstances, he was satisfied that it was in the interests of justice that the hearing should proceed.
11. The Judge having given this ruling, Mr Bhuiyan withdrew. The Judge went on to decide the appeal on the basis of the documents which he listed in paragraph [7] of his decision: the reasons for refusal letter; the notice of appeal with grounds of appeal and accompanying documentation; and the letter dated 12 January 2015 from SEB Solicitors, who were then acting on behalf of the appellant.

The Hearing in the Upper Tribunal

12. At the hearing before me to determine whether an error of law was made out, Mr Bhuiyan developed the arguments advanced in the grounds of appeal to the Upper Tribunal. He submitted that it was very unusual for a Judge to refuse to grant an adjournment where both legal representatives were in agreement that an adjournment should be granted. He did not

take issue with the Judge's account of the submissions made by the representatives on the adjournment issue, except that he had not recorded that the Home Office Presenting Officer (Ms Bisiriyu) had agreed to an adjournment because she also was not ready to proceed. She only had the refusal letter.

13. Since the hearing in the First-tier Tribunal, his firm had obtained some papers from the previous solicitors, but they still did not have a respondent's bundle. Ms Everett interjected that the respondent's bundle only consisted of the refusal letter, the covering letter from the previous solicitors, and the application form.
14. Mr Bhuiyan acknowledged that no evidence had been filed since the hearing in the First-tier Tribunal on behalf of the appellant. There was no witness statement from him on the merits, and there was no witness statement from him dealing with his excuse for being absent from the hearing. Nonetheless, Mr Bhuiyan submitted that the appellant had been denied an opportunity to be heard, and he had thus been deprived of a fair hearing.
15. Ms Everett pointed out that the Upper Tribunal had served standard directions on the appellant and his solicitors, notifying them of the requirement to be prepared to proceed at the same hearing with the remaking of the decision, in the event that an error of law was made out. Nonetheless, this direction had been ignored and the appellant was not present in the Upper Tribunal to give evidence in support of his appeal. She submitted that this vindicated the Judge's concern that the appellant would not attend at a subsequent hearing, if he granted him an adjournment.

Discussion

16. I consider that the Judge gave adequate reasons for refusing to grant an adjournment, and I disagree that his reasoning could have been better explained. I consider that the Judge's reasoning is impeccable.
17. It may be that case that the Presenting Officer, in discussion with Mr Bhuiyan before the hearing, agreed that an adjournment was the sensible course. She only had the documents listed by the Judge at paragraph [7] of his decision; and, as she told the Judge, she had only just become aware of the appellant having changed his solicitors on multiple occasions. Thus, I infer that Ms Bisiriyu had a reasonable apprehension that there might be material documents that were missing.
18. However, as it turns out, there was nothing material that was missing. As regards the Presenting Officer's stance, whatever she had provisionally agreed with Mr Bhuiyan, this did not bind the Judge. Moreover, the stance which the Judge records her as taking before him was a neutral one, rather than one in which she encouraged the Judge to agree that an adjournment would be in the interests of justice. She said that she was ready to proceed, whilst being aware of the potential for the appellant to appeal any decision if the matter was to proceed.

19. The fact that the Judge gave adequate reasons for refusing the adjournment is not determinative of the question of whether the appellant has been the victim of procedural unfairness. It was open to the appellant to bring forward evidence to show that he was deprived of a fair hearing. However, he has failed to grasp this opportunity. I infer that this is because the Judge's findings on the merits of his appeal are unanswerable.
20. In conclusion, the appellant has not persuaded me that the decision to refuse an adjournment was wrong, or that material unfairness resulted from the hearing of his appeal proceeding in his absence.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

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 their 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.

Signed

Date 30 January 2018

Judge Monson

Deputy Upper Tribunal Judge