



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/11349/2018**

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 3 December 2018**

**Decision & Reasons Promulgated
On 6 December 2018**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**BP
ANONYMITY ORDER MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ahmed, Counsel

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This prohibition applies to, amongst others, all parties.

1. The appellant has appealed against a decision dated 17 August 2018 in which the First-tier Tribunal ('FTT') refused to adjourn the hearing and dismissed his appeal on Article 8 grounds.
2. I have anonymised the appellant's name because this decision refers to the circumstances of his children and an order made in family proceedings concerning them.

Background

3. The appellant is a citizen of India. He has three children with his former partner ('B'), born in 2004 (twins) and 2007. He arrived in the United Kingdom as a student in 2010. His family visited him in the UK but on each occasion, they returned to live in India.
4. The FTT decision refers to B and the children arriving in the UK in 2014 and then refusing to return to India. I invited Mr Ahmed to clarify B's immigration history from 2014. He took instructions and was able to clarify the following: after visiting her husband in 2014, B and the children returned to India; they returned as visitors in June 2015 and have not returned to India since this time. Mr Ahmed was unable to be precise as to whether they overstayed their leave but accepted this was likely.
5. On 9 January 2015 the SSHD informed the appellant that he had revoked the sponsorship licence for his college and as such his CAS was no longer valid. The SSHD invited the appellant to submit a fresh application within 60 days. By 2 April 2015 the appellant's solicitors confirmed that he solely relied upon an application to remain on the basis of Article 8, dated 11 March 2015. This appears to have been based upon his private life in the UK. It could not be based upon his family life because at the relevant time, B and the children were in India. By April 2016, the appellant's relationship with B had broken down. In a child arrangements order dated 8 May 2017 it was ordered that the children reside with their mother but that the children should spend time with their father every weekend overnight on a Saturday, with provision made for contact on the children's birthdays. The order records the parties agreeing to be civil to each other. Mr Ahmed confirmed that at the date of the FTT hearing (and continuing) the appellant and his wife have been able to organise dropping off and picking up the children, in order for the Saturday staying contact to take place, effectively.
6. The appellant's human rights application was refused over three years after the date it was made, in a decision dated 8 May 2018. By this time, B and the children were living in the UK but has separated.

7. The appellant appealed against the respondent's decision to refuse him leave in grounds of appeal dated 10 May 2018. These focussed their attention on the fact that his children with whom he has regular contact will remain in the UK, if he is removed to India, and this state of affairs would not be in their best interests and would constitute a breach of Article 8.
8. At the hearing before the FTT on 9 August 2018 the appellant was represented by Mr Ahmed. The appellant only became aware that B had made an asylum claim relying upon domestic violence on the part of the appellant at that hearing. Mr Ahmed applied for an adjournment on the basis that the appellant's appeal should not be determined until after the SSHD had considered B's asylum claim. This was refused by the FTT, which dismissed the appellant's appeal.
9. FTT Judge Keith granted permission to appeal in a decision dated 17 September 2018. He observed that it was arguable that the FTT failed to consider the scenario of the appellant's children remaining in the UK with the benefit of contact with the appellant.

Issues before the Upper Tribunal

10. Mr Ahmed agreed that although the grounds of appeal criticised the substantive decision reached by the FTT, he solely relied upon the ground challenging the fairness of the adjournment refusal. The single issue for me to determine is whether the FTT's hearing is tainted by procedural unfairness by reason of the failure to adjourn the hearing. Mr Ahmed maintained that this was unfair and pre-determined the outcome of the pending asylum claim. Mr McVeety invited me to conclude that there was no unfairness in refusing to adjourn given the known circumstances of B's asylum claim and the evidence available to the FTT.
11. After hearing from both representatives, I reserved my decision.

Error of law discussion

12. The FTT has not erred in law in concluding that it could fairly determine the appeal without an adjournment pending B's protection claim. The FTT considered at [5] that whatever the outcome of the protection claim it would make "*no real difference*" to the appellant's appeal. As Judge Keith observed when granting permission to appeal, the FTT clearly addressed two scenarios: if B's asylum claim failed, the whole family would be returned to India [7] and if it succeeded it would be on the basis of the appellant's violence toward the appellant, which would undermine his case to remain in the UK on the basis of Article 8 [8]. When the decision is read as a whole, it is also sufficiently clear that the FTT turned its mind to the possibility that the children might remain in the UK with

their mother and thus be separated from their father (and therefore unable to have weekly contact with him). The FTT considered that such a scenario would mean that the SSHD accepted B's asylum claim. The FTT was mindful that this would necessitate a finding that this appellant is untruthful and prone to violence. Although the FTT did not say so in terms, when the decision is read as a whole, the FTT was of the view that the appellant's Article 8 appeal would be most unlikely to be successful in such circumstances. The FTT acknowledged that possibility expressly at [29] wherein it found that if permitted to remain in the UK with their mother, the children could visit the appellant in India.

13. The FTT was entitled to be sceptical that an adjournment would make any meaningful difference when all the circumstances are considered. I invited Mr Ahmed to explain how on any legitimate view B's asylum claim could succeed when it is based upon a fear of this appellant, yet he and B are able to effectively and civilly manage contact arrangements. Mr Ahmed acknowledged this was the correct factual matrix before the FTT but submitted that the asylum claim should not be pre-judged prior to the SSHD's consideration of it. The FTT was entitled to consider the likely position if an adjournment was granted and entitled to reach the conclusion that fairness did not require an adjournment of the hearing. There is a prima facie strong public interest in removing the appellant given his immigration history and the fact that he cannot meet the Immigration Rules. That public interest would be even stronger if he is found to be the perpetrator of domestic violence that is sufficiently serious to support a successful international protection claim by his spouse. Although the best interests of the children cannot be determined by reference to the immigration status of the parents. The children are not "qualifying" children. Their prospects of remaining in the UK turn entirely upon their mother's international protection claim. For the reasons already provided this appears to be very weak indeed. When every scenario is considered, the FTT has not acted unfairly in refusing to adjourn the hearing.

Decision

14. The decision of the FTT did not involve the making of an error of law and I do not set it aside.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
3 December 2018