Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00781/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27 April 2018	**On 08 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

A I
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Saifolahi, Counsel instructed by Maliks and Khan Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from a decision of First-tier Tribunal Judge Greasley promulgated on 22 February 2018. The appellant is an Albanian national born on 4 March 1991. Her appeal from the removal decision of the Secretary of State was dismissed on asylum, humanitarian protection, and human rights grounds.

2. Permission to appeal was granted by First-tier Tribunal Judge Alis on 26 March 2018. The principal ground concerned an issue of

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procedural fairness in the refusal to grant an adjournment of the hearing to enable expert evidence from a psychologist to be obtained.

3. It is noteworthy that when the matter came before the judge in the First-tier Tribunal, the appellant relied on a skeleton argument prepared by Counsel. That skeleton argument dealt exclusively with the substantive merits of the appeal. It did not indicate that the appellant's first and primary submission would be that the hearing should be adjourned.

4. The purpose of skeleton arguments is to identify the issues to be determined, to summarise the party's case in relation to those issues, and to assist the judge in his or her preparation and pre-reading. A judge coming to the matter would have assumed from the skeleton argument that this was an effective appeal on the merits and that the previous adjournment applications had been included in the paginated bundle merely by way of background. Such impression would have been reinforced by the covering letter dated 9 February 2018 sent by the appellant's solicitors when lodging the bundle, which made no mention of a possible further application to adjourn.

5. I consider these to have been professional misjudgements. It would have been wiser, and certainly more helpful to the judge, had the appellant's case on the adjournment been set out in the skeleton argument with the level of specificity as subsequently appeared in the grounds of appeal, with the remainder of the skeleton argument addressed, in the alternative, to the substance of the appeal in the event of the application to adjourn being refused.

6. Be that as it may, an oral application to adjourn the matter was made to the judge at the outset of the hearing. The judge dismissed the application and his reasons appear at paragraphs 30 and 31 of the decision:

> "30. Counsel sought to renew the application to obtain the psychological assessment which she also believed would be relevant not only to mental health issues but also credibility, and risk on return factors. For the respondent, Mr Stevenson sought to oppose the application stating the appellant had been in the United Kingdom since as long as 2015 and that there had been ample opportunity in which to obtain such evidence and serve it on the tribunal.
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> 31. I indicated to the representatives and the appellant that I was not minded to adjourn proceedings on the basis that I believe there was sufficient evidence before the tribunal upon which to assess the appellant's account cumulatively, and in the round. I considered my overriding obligation to ensure a fair and timely disposal of the appeal matter as well as the important principles of the Upper Tribunal in **Nwaigwe** which I also considered. I indicated that to my mind there had been a sufficient opportunity to obtain, and serve, all relevant evidence on the tribunal, the

> refusal decision itself having been taken on 4 January 2018, the appellant having instructed later solicitors on 23 January 2018. Accordingly, the hearing would therefore proceed."

7. Decisions on whether or not to adjourn proceedings are case management matters which are generally dealt with swiftly and pragmatically. The Upper Tribunal should be slow to interfere with a discretion properly exercised by a First-tier Tribunal Judge.

8. The judge in this instance made reference to the decision in **Nwaigwe (adjournment – fairness) [2014] UKUT 00418 (IAC)** which emphasises that the question for the Upper Tribunal to consider is whether a decision on an adjournment application is fair as opposed to whether it is reasonable. The underlying question is: "Was there any deprivation of the affected party's right to a fair hearing?". See paragraph [7] which concludes, "In a nutshell, fairness is the supreme consideration". Reference is then made to the Court of Appeal authority of **SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284**.

9. What seems to have been a key feature in the judge's decision in this instance was that the appellant had entered the United Kingdom in 2015 and that in those circumstances there had been sufficient time – "ample opportunity" as counsel put it – in which to obtain and to serve such evidence. In truth, this was a more expansive window than was really the case because the Secretary of State's removal decision was not communicated until 4 January 2018 and the matter came before the judge on 14 February 2018. The judge's main focus should have been on the time elapsed since the Secretary of State's decision as opposed to the period of time from the appellant's arrival in the United Kingdom.

10. As is fully set out in the grounds of appeal, this is not a case where a firm of solicitors has sat idly by and made a last minute application on the morning of the hearing. On the contrary, the chronology shows that a written application was made very promptly following their instruction on 23 January 2018.

11. The first request for an adjournment was made in the pre-hearing review reply form dated 30 January 2018. The tribunal caseworker who apparently dealt with the matter misread or misunderstood the basis upon which the application was pursued, believing it to be seeking the admission of country evidence from an expert as opposed to a report from a psychologist.

12. A second adjournment application was speedily made, which corrected the caseworker's previous misapprehension. It was summarily rejected. The basis of refusal inaccurately states: "an adjournment application made on the same grounds has already been

refused and is again refused for the reasons already given". The attempt to correct the error had clearly not struck home.

13. A third application to adjourn was duly made. This was met not with a reasoned refusal but with an open-ended question: "What evidence is there that the appellant has engaged with mental health services in this country in the last 3 years prior to the refusal of her asylum application?"

14. The appellant, therefore, did not have a proper determination on the merits of any of her three written applications to adjourn the matter.

15. I also note that an appointment had been promptly made for the appellant to see Dr Agnew-Davies, a clinical psychologist, on 20 April 2018 on the basis that a report could be produced by 18 May 2018. None of those considerations feature in the judge's reasoning at paragraphs [30] and [31], set out above.

16. The judge's main reason for refusing the adjournment was not rooted in the fact that earlier written applications had been refused but on the judge's assessment there was sufficient evidence before the Tribunal upon which to draw a conclusion. This, however, is questionable because the issue of the appellant's mental health was expressly raised by the Secretary of State in the removal letter and the Tribunal was likely to have been assisted by material in that regard. In addition, such evidence as the psychologist might produce could also have been relevant to credibility and risk on return, both of which needed to be assessed and determined.

17. Whilst reminding myself that the Upper Tribunal should be reticent to interfere with a case management decision made in the First-tier Tribunal, this is a rare instance where the judge's discretion was not properly exercised. The refusal of the adjournment led to a risk of injustice on the appellant's part and, adopting the principle enunciated in **Nwaigwe**, the decision must be set aside.

18. Both representatives are agreed, and I concur, that the proper course in this instance is to remit the matter to be determined *de novo* in First-tier Tribunal. The decision on the substantive appeal will need to be made afresh once the psychologist's report is available. No findings of fact will be preserved.

Notice of Decision

(1) The appeal is allowed and the decision of the First-tier Tribunal is set aside.

(2) The matter is remitted to the First-tier Tribunal at Hatton Cross for a fresh decision to be made by a judge other than First-tier Tribunal Judge Greasley.

(3) The re-hearing of the appeal is to be listed on the first available date after 1 August 2018, to allow for Dr Agnew-Davies to examine the appellant and prepare a report.

(4) Unless and until the First-tier Tribunal otherwise directs, all additional evidence is to be filed and served at Hatton Cross no later than five clear days before hearing date.

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 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 *Mark Hill* Date 2 May 2018

Deputy Upper Tribunal Judge Hill QC