



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/07981/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 23 October 2019**

**Decision & Reasons
Promulgated
On 13 November 2019**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

**MR ARNOLD SAAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Record, Counsel (direct access)

For the Respondent: Ms R Bassi, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Lebanon born on 6 June 1974. He is appealing against the decision of Judge of the First-tier Tribunal Mathews (“the judge”) promulgated on 12 July 2019.

2. The appellant entered the UK in 2009 and was granted British citizenship in 2015. He was subsequently deprived of his citizenship.
3. The appellant's claim, in summary, is that his removal from the UK would be disproportionate under Article 8 ECHR because of his close relationship with his mother, a British citizen who suffers from a number of serious medical conditions and relies on him for support, both physically and mentally. He submits that the impact on his mother of his removal from the UK would be devastating.
4. The respondent refused the appellant's application. It was not accepted that he had a family or private life in the UK that could satisfy any of the routes to leave to remain under the Immigration Rules and it was not accepted that there were exceptional circumstances that would result in unjustifiably harsh consequences if he were removed from the UK. In respect of the appellant's mother, the respondent stated that the appellant had failed to provide supporting documentation or evidence of her medical conditions or that he was her sole carer.
5. The appeal was listed to be heard in Newport on 20 June 2019 before First-tier Tribunal Mathews.
6. On 12 June 2019 the appellant applied for an adjournment and requested that the appeal be transferred to London on the basis that his mother's medical condition meant that she would be unable to travel to Newport. The application was sent by fax to the correct fax number and an acknowledgment of receipt was received.
7. On 18 June 2019, not having received a response to the adjournment and transfer request, the appellant, with the assistance of his representative, contacted the Tribunal service. He was told that the application had not been received. He submitted the application again. The following day it was refused. The refusal did not acknowledge that the application had initially been made on 12 June 2019 and referred to it having been made only the day before. The application was refused because it was not accepted that the medical evidence showed that the applicant's mother would be unable to travel to the hearing in Newport.
8. Neither the appellant nor a representative on his behalf attended the hearing in Newport on 20 June 2019.
9. The judge considered whether to adjourn the hearing. He referred to the application having been made on 19 June 2019, without acknowledging that the applicant had submitted the application a week earlier, on 12 June 2019. However the main reason given for rejecting the application was not its late submission but that the medical evidence did not establish that the appellant's mother would be either unfit or unable to attend the hearing. At paragraph 6 of the decision the judge stated:

I observe that though medical evidence before me confirms that the appellant's mother is subject to medical investigation for a number of

problems and has forthcoming appointments, there is no medical evidence or report before me saying in terms that she is either unfit to attend court or unfit to travel to court. In the absence of such evidence and having had confirmation that the respondent objected to any such adjournment I declined to adjourn the matter.

10. In a brief decision, the judge observed that the appellant had not submitted a bundle and there was no witness statement from his mother. The only evidence submitted by the appellant was that which was appended to his adjournment request. This included a statement from him, as well medical records and correspondence concerning his mother's health. The judge found that the medical evidence about the appellant's mother did not establish that she was as frail as the appellant suggested. At paragraph 16 the judge stated:

I note the poor copies of medical letters suggesting forthcoming outpatient appointments for the appellant's mother at hospital. But though I am willing to accept that she has some health problems, I do not have adequate evidence before me upon which to find that she is as frail as the appellant suggests or that she is reliant upon him in the way that he suggests.

11. The judge then considered Article 8 ECHR and concluded at paragraphs 19 and 20:

I do not find that the proposed decision is a disproportionate interference with the appellant's Article 8 interests in this case or any other human rights because despite seeking an appeal hearing the appellant has not advanced any adequate evidential matrix upon which I can make findings upon which to consider his Article 8 position.

The applicant did not show that he could meet the applicable Rules and has not discharged the burden of proof in this case. He has made out no family or private life as alleged given the lack of evidence and similarly has made out no exceptional circumstances requiring a grant of leave. The respondent's decision for the reasons given above was proportionate in all the circumstances.

12. The appellant has advanced three grounds of appeal.
- (a) Firstly, he submits that the failure to grant an adjournment was unfair.
 - (b) Secondly, he argues that there was a failure to have proper regard to the evidence regarding his mother's ill health.
 - (c) Thirdly, he submits that the failure to find a private and family life was an error of law.
13. I heard submissions from Ms Record on behalf of the appellant and Ms Bassi on behalf of the respondent. I now consider each of the grounds of appeal.

14. With respect to the adjournment issue, the relevant question is fairness and whether the appellant was deprived of a right to a fair hearing. See *Nwaigwe (adjournment: fairness)* [2014] UKUT 00418 (IAC)
15. The only reason given for seeking an adjournment was that the ill health of the appellant's mother meant that she would be unable to attend the hearing in Newport. Whilst there was a substantial amount of correspondence and medical documentation regarding her health appended to the application for an adjournment, none of the documents stated that she was unfit to travel to or attend the hearing. There are references in the records and correspondence to a heart condition, breathlessness, palpitations and symptoms on exertion but it does not follow from this that the appellant's mother would be unable to travel to Newport with the appellant. In the absence of medical evidence stating, or even indicating, that the appellant's mother was unable to travel to Newport (or would face significant difficulties doing so) it was not unfair for the judge to proceed.
16. A further factor relevant to the fairness of proceeding is that the appellant's mother did not submit a written witness statement. Whilst she could have given oral evidence even without a statement, the absence of a witness statement is indicative that the appellant did not intend to place significant reliance on her evidence. It is also relevant that the key issue regarding the appellant's mother was her health and care needs, the strongest evidence in respect of which is likely to be obtained from medical records and reports rather than oral evidence, and the appellant's mother's ill-health does not explain why only a limited amount of documents about her condition were submitted. Having regard to all of the circumstances, the judge was entitled to refuse – and no procedural unfairness arose from refusing – the application for an adjournment.
17. The second ground of appeal submits that the judge failed to have adequate regard to the medical evidence about the health of the appellant's mother. The consideration of the medical evidence in the decision is very brief but the brevity does not mean the judge fell into error. The records and documents submitted to the First-Tier Tribunal do not show that the appellant's mother requires a high degree of support from the appellant. Nor do they establish, or even indicate, that his removal would have a significant detrimental effect on her health. The medical evidence that was before the First-tier Tribunal could not on any legitimate view support a conclusion that differed to the one reached by the judge and therefore a more comprehensive assessment of the records would not have changed the outcome.
18. The third ground of appeal submits that the judge erred by failing to find that the appellant has a private and family life in the UK, given that he has lived with his mother, who is in poor health, since coming to the UK. The difficulty for the appellant is that the onus is on him to establish his case but he has put forward very little evidence to support it. The evidence before the First-tier Tribunal did not show why the medical condition of the

appellant's mother meant that she required a high degree of support; or, if she did require such support, it could not be obtained through the NHS or other services to which she is entitled. Nor did the evidence show that the appellant has been providing a high level of care and support to his mother, as claimed.

19. It is unclear from paragraphs 19 and 20 of the decision (quoted above at paragraph 11) whether the judge found that article 8(1) was not engaged, or if he found that it was engaged but that removal would not be disproportionate under article 8(2). Even if this lack of clarity amounts to an error of law, it is not material because even if the appellant's relationship with his mother engages article 8, in light of the limited evidence about his mother's health and care needs that was before the First-tier Tribunal (taken together with the absence of evidence about the appellant's private life in the UK or obstacles he might face if removed from the UK) there was no basis upon which any judge could have reasonably found that removal would be disproportionate article 8 ECHR.

Notice of Decision

20. The appeal is dismissed.
21. The decision of the First-tier Tribunal does not contain a material error of law and stands.
22. No anonymity direction is made.

Signed



Upper Tribunal Judge Sheridan

Dated: 11 November 2019