**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/23222/2018

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 3 June 2019** | **On 18 June 2019** |

**Before**

**DR H H STOREY**
**JUDGE OF THE UPPER TRIBUNAL**

**Between**

**MRS KHADIJA [B]**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr A Chohan, Counsel, instructed by Kenneth Jones Solicitors
For the Respondent: Ms S Cunha, Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. In a decision posted on 12 February 2019 Judge Hawdon-Beal of the First-tier Tribunal (FtT) dismissed the appeal of the appellant, a national of Pakistan, against the decision made by the respondent on 30 October 2018 refusing leave to remain. The appeal turns on a single point, the judge' s refusal to adjourn in the face of a request which had indicated that no notice of hearing had been received by the appellant.

2. Since Ms Cunha said she could not defend the judge's decision, I can be relatively brief. The judge's reasons for refusing to adjourn and for proceeding with the appeal in the absence of one of the parties are set out at paragraphs 6-8:

> "6. When the case was called on at 12.15pm, neither the appellant or any member of her family had attended. I checked the file and saw that the notice of hearing had been sent to the appellant at the address given on the appeal notice on December 3rd, 2018 by second class post. Although I was satisfied that the correct spelling of the road was 'Duchess' and not 'Douches' as noted in the notice of appeal, I was satisfied that the number and the postcode were the same and therefore concluded that, despite the wrong spelling of the street name, the letter, with the correct number and postcode would have reached the appellant in plenty of time for this hearing. I checked the notice of appeal and section 5, which gives the details of a representative, had been left blank. Section 6 of the appeal notice, which would have given information as to a sponsor, if there was one, was missing. I therefore caused a telephone call to be made to the mobile telephone number found in the application form.
>
> 7. There was no reply and so a voicemail was left, advising the owner of the telephone to call the Tribunal because the hearing was today, and the Tribunal was considering hearing the matter in absence. No response was received by 12.45 and therefore I indicated that I would consider the matter in absence on the papers. At 1300 I was informed that the sponsor son had rung and said that no notice of hearing had been received. At 1310, a Mr Hussain, who said the he was from G Lewis and Co rang and asked when the notice of hearing had been sent. He was advised that his firm were not noted as representatives and so were not on record as acting for Mrs [B]. He was informed therefore that regrettably he could be given no information. The sponsor son did not ring back and therefore I confirmed with Mr Corden and my clerk that my earlier decision would stand.
>
> 8. I have had regard to the respondent's bundle which is comprised of the refusal letter, the application form and a copy of her passport. I also had regard to the letters of support from her children and the affidavit regarding the property dispute as well as the detailed grounds of appeal which were submitted with the notice of appeal. No further documentation was forthcoming from the appellant."

3. The grounds take issue with this decision on the basis that having decided to arrange for the Tribunal administrator to call the appellant and then to leave a voicemail advising the owner of the telephone to call the Tribunal, the judge should have reviewed her decision to proceed with the hearing in the absence of one of the parties, as within fifteen minutes of her deciding to go ahead with the hearing (at 12.45) the Tribunal had been contacted by solicitors asking when the notice of hearing had been sent. I consider that the grounds have merit. There are two principal difficulties with the judge's reason for refusing to adjourn. First, whilst it was in order for the Tribunal administrator to advise the solicitor that he could not be

given information as he was not on the record, the judge does not say that the solicitor was told to ask the son or mother to ring instead. Given that the judge was made aware that the appellant's son had contacted the solicitor, it was unfair of her to treat as fatal the son's failure to call back unless he was asked to do so and there is no record that he was asked. The judge would have been aware from the file papers that the appellant herself was aged 72 and that she claimed to suffer from ill health and to have mobility problems. Putatively therefore she was a vulnerable appellant and the claim to non-receipt of the notice conveyed by a solicitor should have been considered in that context.

4. A second difficulty with the judge's decision is that she nowhere considered the extent to which failure of the appellant to attend may have made a difference to the assessment of her Article 8 circumstances. The issue of ill health is a prime example, in that at paragraph 21 the judge effectively decided not to accept that the appellant had medical problems. She stated in this paragraph:

> "21. The appellant claims that because of her fall and her resultant ill-health she cannot go back because there is no one to care for her and she has nowhere to live. The grounds of appeal make mention of a Doctor's report upon her health which was submitted with the application form but then apparently returned with the other documents. I have carefully checked but that letter is not in the respondent's bundle and nor has it been reproduced with the grounds of appeal. I therefore have no idea as to the appellant's state of health."

5. Unsurprisingly, therefore the judge's subsequent assessment of the appellant's health and care needs was premised on her not being in ill health or having care needs:

> "25. That leaves the question as to whether in light of all the evidence it is a proportionate decision. I have given consideration to **SS** (**[2017] UKSC 10**) and **AGYARKO** (**[2017] UKSC 11**) and am satisfied that there is nothing compelling in the appellant's circumstances. I am satisfied that she does enjoy family life under article 8 with her family because she is dependent upon them financially and emotionally and that dependency does go beyond the norm as per **KUGATHAS** (**[2003] EWCA Civ 31**), but there is no evidence of her ill health before me and nor, in light of the fact that the appellant maintains that she has been thrown out of her family home, in which she has been living far longer than her daughter-in-law and grandson, is there any evidence that the family have given consideration to fighting the claim by the daughter-in-law and grandson. I also not that there is no evidence to show that there is no care available for the appellant in Pakistan, either paid care or from any other family members nor evidence that such care is beyond the means of the family here in the UK."

6. Given the importance the judge attached in her Article 8 assessment to the absence of evidence, it was incumbent on her to have considered whether it was just to refuse to adjourn (so as to establish whether there

was in fact evidence) despite being informed that the appellant had not received the notice. At the very least the judge should have considered requesting the Tribunal to call the appellant's number again to offer a hearing mid-afternoon. The judge's decision was procedurally unfair.

7. I set aside the judge's decision for material error of law. I see no alternative to the case being remitted to the FtT (not before Judge Hawden-Beal).

8. I direct that the next hearing takes place at Taylor House.

9. I also direct that the next judge takes account of the further letter now produced from the appellant's GP dated 30 May 2019, which states:

> "**Re: [particulars the appellant]**
>
> This letter is to confirm that the above-named patient is registered with our practice as a private patient from September 2018.
>
> She suffers from essential hypertension, bilateral knee pain secondary to moderate to severe osteoarthritis and memory impairment. She takes Amiodipine, Naproxen, Adcal and Omeprazole.
>
> She has complained of memory issues to the family for a long period of time though over the last few months this has become much worse. Her mini mental state score is 22/30 which shows that she has significant memory impairment. She is in the process of having other investigations carried out with a view to referring her to the memory clinic on a private basis.
>
> This letter is issued at the patient's request. If you need any further information please do not hesitate to contact me.
>
> Dr A Siddique"

No anonymity direction is made.

Signed Date: 14 June 2019

H H Storey