Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/05103/2018**

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**
On 22 March 2019 **On 1 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

A A R
(ANONYMITY DIRECTION MADE)
Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Representation:
For the Appellant: Mr M Iqbal, instructed by Westbrook Law
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. To preserve the anonymity direction made by the First-tier Tribunal, I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant.

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2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Onoufriou promulgated on 14 January 2019, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 17 August 1984 and is a national of Bangladesh.

4. On 28 March 2018 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Onoufrio ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 8 February 2019 Judge Osborne gave permission to appeal stating inter alia

> "2. The grounds assert that the Judge wrongly refused to adjourn the hearing due to a clash in representation; at [27-28] the Judge referred to the lack of original medical evidence which the appellant said would be filed; that was another good reason for an adjournment; the letter from the lawyer in Bangladesh [30] was also on its way from Bangladesh; in [33] the Judge found the documents not genuine but provided no reason for that finding.
>
> 3. In an otherwise careful decision it is nonetheless arguable that fairness was not achieved in this appeal by the refusal of the adjournment. Much if not all the responsibility for the double booking on the day of the hearing of the appellant's solicitor was the responsibility of the solicitor and it is arguable that the appellant should not suffer prejudice in those circumstances.
>
> 4. This arguable error of law having been identified, all the grounds are arguable."

The Hearing

6. For the appellant, Mr Iqbal moved the grounds of appeal. He told me that the Judge made two errors. The first was that he should not have refused the application to adjourn the hearing. The second error is inadequate reasons for rejecting the documentary evidence. Mr Iqbal took me from [9] to [33] of the decision and told me that the Judge makes inconsistent findings about the documentary evidence. He told me that at [13(4)] of the decision the Judge finds that all of the documentary evidence required to enable him to make the decision is available, but he then goes on to make unwarranted criticisms of the documents. Counsel for the appellant told me that the Judge failed to follow the guidance given in Tanveer Ahmed [2002] UKAIT 00439

7. For the respondent, Ms Everett told me that the decision does not contain errors of law. She told me that the Judge carefully considers each

strand of evidence & then followed the guidance given in Tanveer Ahmed when dealing with documentary evidence. She told me that the Judge sets out carefully reasoned findings of fact, and reminded me that when the application to adjourn was refused, the appellant walked out of the hearing and refused to offer any evidence. She reminded me that the Judge could only make findings of fact on the basis of the evidence available. Ms Everett told me that the Judge gave adequate reasons for considering, and then refusing, the application to adjourn. She urged me to dismiss the appeal and allow the decision to stand

Analysis

8. Between [8] and [14] of the decision the Judge deals with the adjournment request made on the date of the hearing before the First-tier Tribunal. The case file tells me that an application to adjourn the hearing was made by the appellant (before the hearing date) on 14 December 2018. That application was refused on the same day and the refusal was intimated to the appellant. On 18 December 2018 (the date of hearing) the appellant attended the First-tier Tribunal and renewed his application to adjourn because his solicitor was not available to conduct the hearing.

9. At [8] of the decision the Judge sets out the background to the appellant's application to adjourn. At [9] the Judge rehearses the appellant's reasons for seeking an adjournment and [10] the Judge details the respondent's opposition to the application to adjourn. At [12] the Judge reminds himself of rule 2 of the procedure rules, and at [13], in four sub-paragraphs, the Judge gives his reasons for refusing the application to adjourn. At [13(4)] the Judge says that he has the appellant's bundle which includes the appellant's witness statement and a witness statement from the appellant's father. At [13(3)] the Judge records the Home Office presenting officer's position that copy documents would be treated as original.

10. In Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) it was held that if a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the First-tier Tribunal acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing?

11. The Judge refused the application to adjourn. The appellant then decided not to participate in the hearing, declining to provide oral evidence. Between [19] and [22] the Judge considers the background

materials. Between [23] and [35] the Judge makes findings of fact drawn from the documentary evidence placed before him.

12. The question for me is whether or not the appellant was deprived of a fair hearing. The Judge writes a detailed and carefully reasoned decision. After refusing the application to adjourn the Judge explained the procedure to the appellant. The appellant chose not to participate in the hearing. The Judge clearly adopted an inquisitorial role when considering each strand of evidence. Even though the appellant did not participate in the hearing the Judge manifestly took account of what the appellant says in his witness statement, so that the hearing proceeded as if the appellant gave evidence in chief without allowing his evidence to be tested by cross-examination.

13. The Judge clearly fulfilled an enabling role. When the decision is read carefully there is no trace of any unfairness to the appellant. As the appellant was not deprived of a fair hearing there is no error of law in refusing the application to adjourn. The Judge sets out adequate reasons for refusing the application to adjourn

14. The documentary evidence including a copy FIR and a copy arrest warrant. The Judge records the Home Office presenting officer's acceptance that the documents would not be challenged solely because they are copies ([13(3)] and [10(3)]).

15. At [23] and [28] the Judge considers a copy hospital discharge certificate. His principal reason for placing little weight upon that adminicle of evidence is that the document does not confirm that the appellant was attacked by Awami League supporters. At [30] the Judge refers to an FIR and an arrest warrant. At [33] the Judge finds that the documents bearing to be the FIR and arrest warrant are not genuine and then gives good reasons for finding that the copies are not copies of genuine documents.

16. Tanveer Ahmed (Starred) 2002 UKIAT 00439 says that Judges should determine how much weight is to be given to each piece of evidence in the appeal in the normal way. It is then for the Judge to assess each piece of evidence together to arrive at an overall conclusion. A document is no different to any other piece of evidence in this respect. The Judge must decide whether it is a weighty piece of evidence; whether the weight that can be attributed to the document is limited; or whether it is a document which merits no weight at all.

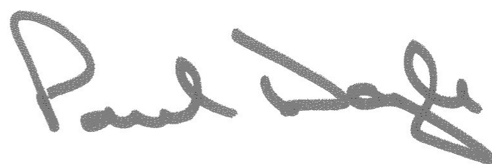
17. Contrary to what is now plead for the appellant, the Judge gives sustainable reasons for rejecting the documentary evidence. He does not reject the documentary evidence because only copies are placed before him. He draws on other strands of evidence and finds that that other evidence undermines the documents. There is nothing wrong with the logic employed by the Judge. Even though the appellant insists that original documents were in the post and would arrive the day after the

Tribunal hearing, no purpose would be served by waiting for the documents because the Judge treated the copies as if they were the originals.

18. The Judge manifestly follows the guidance given in Tanveer Ahmed. Even though the appellant turned his back on the Tribunal hearing and chose not to participate, the Judge carefully considers the evidence which had been prepared for the appellant, and carefully considered the appellant's case as set out in his witness statement. A fair reading of the decision makes it clear that the Judge carefully considered each strand of evidence before reaching well-reasoned conclusions.

19. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

20. A fair reading of the decision demonstrates that the Judge applied the correct test in law. The Judge carried out a holistic assessment of all of the evidence. The Judge refused the application to adjourn, but the appellant's evidence was fully considered and the appellant was treated fairly. There is nothing unfair in the procedure adopted nor in the manner in which the evidence was considered. There is nothing wrong with the



Judge's fact-finding exercise. The appellant might not like the conclusion that the Judge arrived at, but that conclusion is the result of the correctly applied legal equation. The correct test in law has been applied. The decision does not contain a material error of law.

21. The decision does not contain a material error of law. The Judge's decision stands.

DECISION

22. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 14 January 2019, stands.

Signed Date 28 March 2019

Deputy Upper Tribunal Judge Doyle