



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

Appeal Number: PA/06377/2018

THE IMMIGRATION ACTS

Determined at Field House

Decision and

Reasons

On 17th December 2018

Promulgated

On 25th January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

S.J.S.

(ANONYMITY DIRECTION MAINTAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Attendance excused

For the Respondent: Attendance excused

DECISION BY CONSENT AND DIRECTIONS

Pursuant to Rule 39 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and by the consent of the parties the following order is made:

Upon the parties' agreement that the decision of the First-tier Tribunal promulgated on 27th June 2018 discloses a material error of law, it is hereby ordered by consent as follows.

The First-tier Tribunal Judge made errors of law in relation to the complaints made in the Grounds of Appeal drafted by Counsel for the Appellant in the following respects as agreed by the Respondent in his

Rule 24 response dated 12th December 2018 from Mr S Kotas (Senior Presenting Officer):

- a. In refusing the request to adjourn the First-tier Tribunal failed to consider the issues in line with the principles laid down in *Nwaigwe (adjournment: fairness)* [2014] UKUT 418, and failed to note that the test is one of “fairness”. The judge also failed to note the compressed timescales for listing the appeal following the refusal, which was material to the fair adjudication of this issue. Finally, the judge’s reasoning is circular in terms of the refusal to adjourn to obtain medical evidence because there “was no evidence at all”. Logically, there cannot be any evidence until it is produced but that does not negate the fact that an adjournment can be sought to obtain medical evidence, albeit that it is not in existence at the time the adjournment application is made.

As a consequence of the above agreed errors, the decision is set aside in its entirety and is remitted to be heard by a differently constituted bench.

The Appellant’s appeal to the Upper Tribunal is therefore allowed.

The decision of the First-tier Tribunal is set aside for legal error by consent.

Directions

I make the following directions for the continuation and remitted hearing that is to shortly follow before the First-tier Tribunal:

The appeal is to be remitted to Hatton Cross.

No interpreter is required.

There is no indication at present as to the number of witnesses that may be called.

The time estimate given is three hours.

No special directions have been requested, however, for the sake of completeness, if there is insufficient time for the Appellant to produce the medical evidence previously mentioned at the hearing before the First-tier Tribunal, an application should be made in writing in advance of the hearing date to secure any necessary adjournment.

Anonymity direction maintained.

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 her or any member of her 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

Date 14 January 2019

Deputy Upper Tribunal Judge Saini