



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11507/2018

THE IMMIGRATION ACTS

Heard at Field House
On 28 March 2019

Decision & Reasons Promulgated
On 5 April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

SAYDUR RAHMAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Haque of Diplock Solicitors

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Davey promulgated on 20 December 2018 dismissing the appeal against a decision of the Respondent dated 26 August 2017 on protection and human rights grounds.
2. The Appellant is a national of Bangladesh born on 3 February 1986.
3. The primary issue before the Upper Tribunal relates to the First-tier Tribunal Judge's decision to refuse to grant an adjournment in the appeal.

4. The Appellant did not attend the hearing listed on 29 October 2019 at Taylor House in person. He was represented at the hearing by a legal representative. Shortly prior to the hearing, by way of letter dated 26 October 2018, the Appellant's representatives wrote to the Tribunal indicating that the Appellant was unlikely to attend and requesting an adjournment. The adjournment request was pursued by the Appellant's representative at the hearing before the First-tier Tribunal.
5. The Judge refused to grant the adjournment and proceeded to determine the appeal in the absence of the Appellant. The Judge addresses the adjournment application at paragraphs 2-10 of his 'Decision and Reasons'; those paragraphs are a matter of record and accordingly I do not reproduce them in their entirety here, but make reference as is incidental to the contents of this Decision.
6. The Appellant challenges the decision of the First-tier Tribunal Judge. Permission to appeal was initially refused by First-tier Tribunal Judge Murray on 16 January 2019, but subsequently granted by Deputy Upper Tribunal Judge Doyle on 28 February 2019. In granting permission to appeal, Judge Doyle commented:

"On balance there is sufficient in the grounds to make out an arguable case that the First-tier Tribunal Judge erred in his approach to the application for an adjournment. The First-tier Tribunal Judge did not consider the guidance given in Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC). It is arguable that the refusal to adjourn infected the overall assessment of credibility."

7. The Appellant's grounds of appeal helpfully set out a passage from the decision of Nwaigwe in these terms:

"As a general rule, good reason will have to be demonstrated in order to secure an adjournment. There are strong practical and case management reasons for this, particularly in the contemporary litigation culture with its emphasis on efficiency and expedition. However, these considerations, unquestionably important though they are, must be tempered and applied with the recognition that a fundamental common law right, namely the right of every litigant to a fair hearing, is engaged. In any case where a question of possible adjournment arises, this is the dominant consideration."

8. The grounds of appeal also cite similar references to the imperative of ensuring a fair hearing, also emphasising the significance of the nature of the issues at stake - particularly in the context of a protection appeal: see paragraphs 9 and 11 of the grounds of appeal, citing passages from Macharia v IAT [1999] EWCA Civ 3001 and SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284.
9. Both representatives before me have reminded me of the contents of the headnote to the case of Nwaigwe, and in particular the following passage:

"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 FtT 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?"

10. It is against this framework that I consider the issues in this particular case.
11. As noted above, The First-tier Tribunal Judge addressed the adjournment application at paragraphs 2-10 of the Decision.
12. At paragraph 2 the Judge set out the relevant paragraphs from the solicitors' letter of 26 October 2018. There is no suggestion that the Judge has in any way misquoted or miscited the substance of that letter.
13. At paragraph 3, the Judge notes that, although the solicitors' letter refers to the Appellant having consulted with a general practitioner and had appended to it a photocopy of a label from medication prescribed to the Appellant on 17 October 2018, there was *"no explanation from a doctor as to what relevance Sertraline has to the ability to give evidence or attend the hearing or anything describing his mental or physical state which might prevent the Appellant attending a hearing and/or giving evidence."*
14. At paragraph 4, the Judge noted that the Appellant's representative had nothing to add to the substance of the letter and its enclosure.
15. At paragraphs 5-7 the Judge noted that the Appellant had been represented from an earlier stage in the proceedings and that extensive grounds of appeal had been settled on 28 September 2018 which, the Judge considered it reasonable to infer, must have been based on instructions given by the Appellant. The Judge also noted that at a Case Management hearing on 15 October 2018, nothing was recorded to suggest that there might be any medical issues or other difficulties that would either prevent the Appellant providing a witness statement or give rise to the possibility of an adjournment being sought.
16. At paragraph 8 the Judge states:

"I did not find the evidence of the packet of drugs sufficient to show, on a balance of probabilities or even to the lower standard that applies in asylum cases, that a good explanation had been provided to explain the Appellant's absence."
17. In my judgement the reference therein to 'a good explanation' echoes the words in **Nwaigwe** – *"good reason will have to be demonstrated"*.
18. It seems to me that similarly the Judge in substance considered whether or not the Appellant had provided 'good reason' when he states:

"There was no explanation provided to me as to why the Appellant's health issue, apparently so serious that he has depression and suicidal ideation, should only have come about in the last two weeks: That outcome seemed to me highly unlikely." (paragraph 9)
19. Further and similarly, in the concluding paragraph in respect of the application for adjournment, the Judge states:

"In these circumstances I did not find that the fair, just and proper disposal of this appeal on 29 October 2018 required the matter to be adjourned." (paragraph 10)

20. From the foregoing it is, in my judgement, plain and obvious that the Judge had clearly in mind that it was incumbent upon the Appellant to offer a good explanation or reason why he was not able to attend the hearing.
21. If the Appellant could not offer such a reason then he could not argue that he was being deprived of a fair hearing because he could not deny that he was afforded an opportunity of attending a hearing of his appeal to present his case.
22. The Judge's reasoning was sound. There was nothing before the Judge that would have established either that the Appellant could not attend the hearing, or that if he did attend the hearing he was in some way unable to participate in proceedings. Nor was there anything to establish that he had been unable to give instructions to his solicitors - who had been representing him for some time - such that a witness statement and/or an appeal bundle could not have been prepared for the hearing.
23. I note that in support of the application for permission to appeal further evidence was filed by way of a GP letter dated 3 December 2018 and an appointment letter dated 23 November 2018 for an appointment on 25 January 2019 for counselling at the Tower Hamlets Talking Therapy Centre in East London. Nothing further has been filed before this Tribunal, whether pursuant to the commencement of the counselling process, or otherwise in respect of a witness statement and/or materials in the appeal.
24. The GP's letter is in these terms:

"The aforementioned individual is a patient of our surgery and has been registered with us since 17 October 2017. He first saw myself on 17 October 2018 where he was reporting symptoms of stress, anxiety, depression and sleep disturbance. Most of this stemmed from difficulties that he had in Bangladesh where he says he was threatened by his uncle. In addition to this he is going through a divorce - which is an additional source of stress. I started him on Sertraline 50mg which he is still taking, but so far hasn't had much benefit from. The Sertraline was increased to 100mg on 14 November 2018. I also referred him for counselling - which he is still awaiting.

The patient is concerned that due to his depression and anxiety symptoms if he is called to go to court he will freeze and won't be able to speak. I think while he is receiving treatment for these symptoms he may improve if he can delay the immigration proceedings for a short while."
25. I note that the symptoms described in the letter are not uncommon symptoms for appellants before the IAC. It is oftentimes the case that medical evidence will be provided in appeals identifying such symptoms (with or without an underlying diagnosis), for example, as a method of offering contextual support for an account of past events, or in support of an application that a witness should be dealt with as a vulnerable witness. The symptoms themselves do not indicate an inability to give instructions, or an inability to attend a hearing, or an inability to engage at a hearing through the process of giving evidence.
26. The reference to *"the patient being concerned that... he will freeze"* is set out in the letter as no more than the GP recording what the Appellant informed him. The GP does not express a personal opinion as to whether the Appellant's concerns are well-

founded or are supported in medical terms. Moreover, the GP's opinion that a delay in the proceedings might see an improvement in the Appellant's symptoms does not amount to an expression of opinion that the Appellant could not engage with the appeal process at any particular time.

27. Accordingly, even the evidence that has been filed since the hearing before Judge Davey does not establish that the Appellant was either unable to attend the hearing or unable to give evidence at a hearing.
28. In all the circumstances, I can find nothing in any of the materials that remotely suggests that the Appellant had good reason for not attending at Taylor House on 29 October 2018. It necessarily follows that I find that he has not been deprived of a right to a fair hearing: he had the opportunity of attending and has not established any reason why he did not avail himself of that opportunity.
29. Moreover, it is abundantly clear that the Judge engaged with the issues before him and reached an entirely sustainable conclusion, adequately expressed and expressed in a way that does not run contrary to the principles to be derived from the various case law that has been cited before me.
30. I reject the primary basis of the Appellant's challenge to the decision of the First-tier Tribunal.
31. For completeness, I note that at paragraphs 16-18 of the grounds of appeal challenge is made to the substance of the decision on the protection appeal. The contents of these paragraphs were not amplified before me or otherwise pursued. Indeed, in substance it seems to me that they amount to little more than a disagreement with the outcome. The overall substance of the Judge's conclusions on the protection claim seem to me to be adequately reasoned; I can identify no basis for impugning the decision on its merits.

Notice of Decision

32. The decision of the First-tier Tribunal contained no error of law and accordingly stands.
33. The Appellant's appeal remains dismissed.
34. No anonymity direction is sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: 4 April 2019

Deputy Upper Tribunal Judge I A Lewis