Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/12584/2019

THE IMMIGRATION ACTS

Heard at Field House by video conference on 25 November 2020	**Decision & Reasons Promulgated On 3 December 2020**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

NADARAJAH ANNAPOORANAM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Ms C. Bayati, instructed by Amirthan & Suresh Solicitors
For the respondent: Ms A. Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 08 July 2019 to refuse a human rights claim by a notice of appeal filed on 22 July 2019. The appellant named Kothala & Co as her legal representatives.

2. The appellant was sent a notice of hearing on 30 July 2019, for a hearing date on 28 October 2019 i.e. three months' notice. The appellant's new legal representatives, Amirthan & Suresh Solicitors, made a written adjournment application on 21 October 2019 because (i) there had been a delay in transferring the papers from her previous legal representatives;

(ii) on perusal of the papers it was a complex matter that required further preparation; (iii) the appellant had 'mental issues' which needed to be explored; and (iv) they could not complete her witness statement without the complete set of papers from the previous representatives. The First-tier Tribunal refused the application on 23 October 2020.

3. A further written application was made on 23 October 2020 asking for the decision to be reviewed stating that the previous representatives had done nothing to progress her case and the appellant had reluctantly decided to instruct a different firm. The application referred to her 'age and medical condition' without particularising why this might justify an adjournment. The First-tier Tribunal refused the application on 25 October 2020 on the ground that the appellant had sufficient time to prepare for the appeal.

4. First-tier Tribunal Judge Abebrese ("the judge") refused a renewed oral application for an adjournment at the hearing on 28 October 2020 in the following terms:

> "6. The appellant (sic) representative made an application for a (sic) adjournment of the hearing on the basis that she required more time to prepare for the appeal. The application was considered on 24 October 2019 by the tribunal and it was dismissed because the appellant had been provided with notice of the appeal hearing on 25 July 2019 and she therefore had ample opportunity to prepare for the hearing on 28 October 2019. It was noted further that there were no documents to suggest that the appellant has mental issues and the assertions of the appellant are speculative and unsupported by any medical evidence.
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> 7. The application for an adjournment was renewed before me by Ms Allen and I found no reason to reach a different conclusion as stated in the paragraph above. It [was] submitted by Ms Allen that the appellant had changed legal representatives and those instructing her were in the process of obtaining all of the documents from them in order to prepare the appellant's appeal. I was referred to the appellant's Solicitors (sic) letter dated 21 October 2019 and received by the tribunal on 23 October 2019. The letter states that an adjournment is sought because of the delay in the transfer of documents from the appellant's previous Solicitors (sic) and that the appellant has a complex immigration history and that matters raised in this appeal are complex. The appellant's mental issues it is suggested has made in necessary for them to prepare a detailed witness statement.
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> 8. I considered the submissions of Ms Allen and I determined that the appellant had been aware of the hearing for some time and that she has had opportunity to prepare her appeal and that it was her sole decision to change her legal representatives so close to the hearing date. I was not provided with any plausible evidence as to why she decided to change legal represntatives so close to the hearing date of the appeal.
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> 9. I was referred to the appellant's mental issues but I was not provided with any supporting evidence which I would [have] expected bearing in mind the appellant's long immigration history and length of time that she has been in the UK."

5. The judge recorded that counsel 'did not call any evidence and she made no further submissions'. It is apparent from counsel's subsequent witness statement that she was only instructed to apply for an adjournment and in fact withdrew from the case when the application was refused. The judge dismissed the appeal on the ground that the appellant did not meet the private life requirements of paragraph 276ADE of the immigration rules. She did not meet the 20-year long residence requirement. She had spent most of her life in Sri Lanka. She had failed to produce sufficient evidence to show that she would face 'very significant obstacles' to integration. The judge concluded that there was insufficient evidence to show that removal would be disproportionate given the lack of evidence from the appellant or her son. The appeal was dismissed on human rights grounds.

6. The appellant appeals the First-tier Tribunal decision on the ground that it was unfair to refuse the adjournment request. The application for permission to appeal included a letter from the appellant's GP dated 02 December 2019, which stated that the appellant attended the surgery on 29 October 2019 (the day after the hearing) and was treated for a chest infection.

7. First-tier Tribunal Judge Foudy granted permission to appeal to the Upper Tribunal in an order sent on 27 May 2020. Further directions were sent to the parties in response to which the respondent replied:

> "4. The SSHD notes that whilst the pre-hearing adjournment requests had been refused there had been no previous adjournment of the hearing to indicate an attempt to systematically frustrate proceedings. The age of the Appellant plausibly supports ill health at short notice. It is acknowledged that the FTTJ (Para 8) attached weight to a lack of 'plausible evidence' for the change of representation. Whilst this may be appropriate under a 'reasonableness' assessment the test was one of 'fairness'. On balance on the evidence available to the author it appears that the refusal of the adjournment request lacked appropriate consideration of the factors holistically in the context of a decision under 'fairness'. However, in the absence of access to the SSHD's file and the HOPO's record of proceedings the SSHD does not concede material error, but adopts a *neutral* stance on the issue."

8. In light of this response it is possible that the appeal could have been determined without a hearing, but the case was listed for a remote hearing at the request of the appellant's representative. By the time the case came to hearing both parties agreed that it was unfair to proceed to determine the appeal without the appellant or any evidence in support. I agree. Even if there was no medical evidence, there was nothing in the history of the appeal to suggest that the appellant might simply be seeking to delay proceedings. It was plausible that an 80 year old woman might have age related health problems even if the application made by her legal representative was vague and unsupported by medical evidence. Evidence submitted with this application indicates that the appellant was likely to have been unwell as claimed. The fact that no evidence had been submitted in support of the appeal supported the appellant's explanation

as to why she chose to change representatives shortly before the hearing. She was dissatisfied with the lack of preparation by her previous representatives.

9. I conclude that the First-tier Tribunal decision involved the making of an error of law. The decision is set aside. I agree with the parties that the appellant was denied a hearing and that it is appropriate to remit the case to the First-tier Tribunal.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The case is remitted to the First-tier Tribunal for a fresh hearing

Signed M. Canavan Date 25 November 2020
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email