Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/17248/2019

THE IMMIGRATION ACTS

Heard at Field House by Video (Skype for business)	**Decision & Reasons Promulgated**
On 27 November 2020	**On 31 December 2020**
Extempore	

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MRS AMENA KHANAM CHOWDHURY
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Corben, Counsel
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Buckwell promulgated on 21 January 2020. The appellant had an appeal on 20 December 2019 which she did not attend. That is the core of this case. The challenge is that the judge should have adjourned

the case and that he erred in not doing so in that to summarise the grounds he had not considered the issue of fairness properly.

2. The appellant has been in the United Kingdom for a number of years. On 11 April 2019 she applied for leave to remain in the United Kingdom on the basis of human rights. She has family here who support her, she also has type 2 diabetes, hypertension, chronic kidney disease and contrary to what Judge Buckwell considered was a sinus problem, she had sinus bradycardia which resulted in her having to have a pacemaker inserted.

3. In this case the appellant had not provided a bundle to the judge. I accept that the appellant had been acting in person. The judge had before him an unsigned letter dated 18 December stating that the appellant had attended Newham Hospital on 17 December but it does not say that she was unable to attend the hearing. The judge in his decision at paragraph 26 noted that although there had been no deadline imposed there had still been no bundle or documents provided in advance of the hearing date but noted that they should have been submitted as soon as they were available. The judge also noted at paragraph 28 that the appellant had given an address in Croydon yet appears to have been attending hospital and a GP in Newham E6 which is a significant distance away. Importantly the judge sets out what he considered at paragraphs 29 to 32 addressing himself properly in line with Nwaigwe and that the issue was one of fairness.

4. Although the rule considered in Nwaigwe has changed McCloskey J (as he then was) referred to SH (Afghanistan) noting that what fairness is required and what is involved in order to achieve fairness is for the decision of course as a matter of law. These principles are applicable here.

5. In this case the judge had limited information before him. He had some medical evidence from the bundle of material that had been supplied to the Secretary of State and it is evident that he was aware of that as can be seen from what he said at paragraph 38 and at paragraphs 40 to 43. There is no indication that he had reached a decision on the issue of adjournment without having considered that.

6. Mr Corben for the appellant submits that fairness in this case required the judge to consider what the effect would be on the appellant if he were to proceed with the hearing. To an extent I consider that that is right, but it is not a requirement that the judge should speculate unduly as to what might or might not happen. In this case the judge was faced with the situation in which the appellant had not provided evidence to show that she was unfit to attend the hearing nor had she provided any material in support of her appeal as the directions had ordered. The material provided shows that she was unwell but that her illness was intermittent and as Mr Whitwell pointed out it does not appear to have stopped her travelling from Croydon to East Ham.

7. It is clear that the judge addressed himself properly as to the law. It cannot be said that there is any evidence that he did not bear in mind addressing the issues or the material that was in front of him. In this case it cannot be said that the judge was under a duty on the facts of this case to speculate as to what might or might not happen were he to proceed. In this case there was no indication that the appellant was going to provide any material of a medical nature or that she was going to provide any additional evidence at all. She had had the opportunity to do so, she had chosen not to provide that material in time for the court or for that matter for the Home Office. The requirements of fairness do not require a judge to address what evidence might hypothetically be provided, and in this case, as presented, showing a breach of article 3 or that paragraph 276 ADE of the Immigration Rules was met; or that if it was not, that removal would be in breach of Article 8, are hard tests to meet, yet there is no indication that any evidence to prove that case was forthcoming.

8. The question is raised as to whether this was the impression of fairness was given in the sense that justice has to be seen to be done but in this case what the appellant did was to do in effect nothing to pursue her case. She did not supply any material to the court. I accept that she is not represented but that does not absolve her from at least providing some material to the court or taking some active steps in support of her case. It cannot be said that justice is not seen to be done if an appellant simply does not engage with the appeal, fails to provide evidence and fails to provide an explanation for her absence, and her appeal is then dismissed.

9. There was insufficient medical evidence to show that she was unable to attend, and it is noted that she does have some assistance of family who may be able to assist her with linguistic problems.

10. But the reality is that the appellant simply did not engage with the case. She did not attend the hearing, she provided no evidence that she was not really fit to attend and yet appears to want to say that that is a reason why it is unfair for her for the judge to have proceeded.

11. On the facts of this case the judge was entitled to proceed and I conclude that he has given adequate and sustainable reasons for doing so. It cannot be said that on the facts of this case that the judge erred in that assessment and it cannot be argued that his reasons are insufficient. Little or no material was put before the judge in which he could form an opinion and this is a case where given the nature of what has been said in the sense that the difficulties that the appellant has on return to Bangladesh arise from her medical problems, there was insufficient evidence of that put forward and it would need to be in the form of some form of documentary evidence rather than simply the oral evidence of the appellant.

12. To conclude, it cannot in this case be said that the judge acted in a matter which was unlawful or permitted unfairness in the proceedings. It is not for the judge to speculate in the absence of evidence as to what the appellant

might or might not be able to have produced at a hearing if she had attended where, as here, there was simply no evidence as to whether she would be able to do so or intended to do so.

13. For these reasons I consider that the judge gave adequate and sustainable reasons for not adjourning the hearing.

14. Further and although this did not form much of the argument before me, I am satisfied that the judge did reach the findings on the material matters which were open to him. The threshold set out in paragraph 276ADE(1)(vi) is a high threshold. It was open to the judge to conclude that on the facts of this case very significant obstacles were not established and his reasons at paragraph 43 are sustainable. Similarly, having considered the judge was entitled to reach the conclusions outside the Immigration Rules for, in reality paragraph GEN.3.2 of the Immigration Rules, that there was no reason why applying Section 117B that the decision would not be proportionate. The grounds insofar as they challenge these are really in reality a disagreement with those findings rather than pointing out to any proper basis in which it could be said that the judge had erred. Accordingly, for these reasons I uphold the decision of the First-tier Tribunal on the basis that it did not involve the making of an error of law.

Notice of Decision

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

No anonymity direction is made.

Signed Date 11 December 2020

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul