



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

Appeal Number: HU/12450/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 28 January 2021**

**Decision & Reasons Promulgated
On 17 February 2021**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**Muhammad Jahanzaib Khan Kakar
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms P Solanki, Counsel, instructed by Sky Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision issued on 29 November 2019 of First-tier Tribunal Judge G D Davidson which refused the appellant's Article 8 ECHR appeal.
2. The appellant is a national of Pakistan and was born on 2 December 1982.
3. The appellant came to the UK as a student on 31 January 2010. He obtained further leave until 26 June 2016. He applied for leave as a Tier 1 Entrepreneur on 27 May 2016. That application was refused on 13 September 2017. An administrative review dated 24 October 2017

maintained that refusal. A judicial review of the refusal and administrative review decision was unsuccessful.

4. On 9 November 2017 the appellant made a Tier 1 Entrepreneur application which was varied to a human rights application on 10 January 2019. That application was refused on 8 July 2019, that refusal leading to these proceedings.
5. The appeal came before the First-tier Tribunal on 19 November 2019. Prior to the hearing an application for an adjournment was made on 11 November 2019 on the basis of the appellant's ill-health. The adjournment request was refused. It was renewed on 15 November 2019 but again refused. A further adjournment request made on 18 November 2019 was also refused. On the day of the hearing, neither the appellant nor his legal advisers attended; see paragraphs 4 to 8 of the decision.
6. The First-tier Tribunal considered whether to proceed in paragraphs 9 to 12 of the decision. He referred to the case of Nwaigwe (adjournment: fairness) [2014] UKUT 000418 (IAC). The judge set out the head note of the case which states:

"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 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? See SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284."
7. The First-tier Tribunal concluded that there was insufficient medical evidence to warrant an adjournment; see paragraph 12. The First-tier Tribunal proceeded to dismiss the appeal.
8. The appellant appealed and was granted permission to appeal by Upper Tribunal Grubb on 30 June 2020. With the renewed grounds of appeal the appellant provided evidence that he had texted his legal advisers on 18 November 2019 stating that he was in Rotherham General Hospital. He provided a letter from Rotherham General Hospital stating that he was in A & E on 18 November 2019 and 19 November 2019 and was experiencing chest pain and that he was x-rayed. The appellant provided a prescription issued by Rotherham General Hospital on 19 November 2019. The Tribunal already had documents from Sky Solicitors enclosing a GP letter dated 7 November 2019 stating the appellant had been diagnosed with depression and exhibited suicidal ideation and had been advised to seek counselling and prescribed anti-depressants and that as a result they had not been able to take instructions from the appellant for the hearing.

9. Before me, the respondent conceded that, albeit the First-tier Tribunal judge may have taken a reasonable approach to what was before her, the additional medical evidence provided with the grounds of appeal was sufficient to show that there was a deprivation of the appellant's right to a fair hearing; Nwaigwe applied. The respondent therefore conceded that procedural error was shown and that the decision of the First-tier Tribunal should be set aside to be re-made.
10. The Tribunal found the respondent's approach to be a rational one and therefore sets aside the decision of the First-tier Tribunal for procedural error. The parties and the Tribunal were in agreement that the correct disposal where no valid hearing had taken place was to remit the appeal to the First-tier Tribunal to be re-made *de novo*.

Notice of Decision

11. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade.
12. The appeal is remitted to the First-tier Tribunal to be re-made *de novo*.

Signed: S Pitt
Upper Tribunal Judge Pitt

Date: 28 January 2021