



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2021-001449

First-Tier Tribunal No:
PA/52437/2020
IA/02383/2020

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 16th May 2024**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**BL
(ANONYMITY DIRECTION MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms N Javed, Syeds Solicitors

For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 15 June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant (*and/or any member of his family*) are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant and or any member of his family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant is a national of Nepal. His appeal against the decision of the respondent dated 13 November 2020 to refuse his claim for international protection was dismissed by First-Tier Tribunal Judge Thapar for reasons set out in her decision dated 14 December 2021.
2. The appellant claims Judge Thapar's decision is tainted by procedural unfairness because she refused an application for an adjournment that was made at the outset of the hearing of the appeal to enable the appellant to rely upon translated extracts from his Facebook account that corroborate his account of his opposition to the authorities in Nepal. The appellant also claims Judge Thapar failed to consider the evidence of the appellant regarding his involvement with the 'King Saviour Party', and failed to adequately consider the best interests of the appellant's five-year-old daughter who was born in the UK and has never visited Nepal.
3. Permission to appeal was granted by First-Tier Tribunal Judge Pickering on 21 January 2022.
4. Before me, Ms Javed submits the decision of Judge Thapar to refuse the application for an adjournment was unfair and the appellant should properly have been given an opportunity to provide the Tribunal with evidence that supports his account that he will be at risk upon return to Nepal. She submits that notwithstanding the late stage at which the application for an adjournment was made, the evidence is relevant and the appellant had provided some explanation as to why he had not provided that evidence earlier.
5. In reply, Mr Lawson accepts the guidance provided in Nwagwe (adjournment: fairness) [2014] UKUT 418 is that in considering an adjournment application, fairness is the key issue. Here, he submits, the appellant had been given various opportunities to provide evidence in support of his appeal as set out in paragraph [9] of the decision. The Judge rejected the claim that the appellant was unaware that he was required to produce evidence earlier. The appellant was seeking to rely upon 'posts' on his Facebook account in the four or five months prior to the hearing of his appeal (*i.e. since around August 2021*). Judge Thapar noted at paragraph [10] of her decision that the appellant's representatives had in fact sought an extension of time to provide further evidence on 28 October 2021. That evidence was described as 'crucial relevant information' to support his appeal. The extension of time was granted. The appellant made no reference to any activity on his Facebook account in his witness statement dated 29 October 2021. Mr Lawson submits the appellant had been provided with ample time to file and serve the evidence that he relied upon. Mr Lawson submits that in reaching her decision, Judge Thapar had regard to the claims made by the respondent and the evidence available to the Tribunal. She considered the best

interests of the appellant's daughter and it was open to her to dismiss the appeal for the reasons set out in the decision.

Decision

6. I reject the claim that Judge Thapar erred in refusing the application for an adjournment. At paragraphs [2] and [3], of her decision Judge Thapar set out the appellant's immigration history:

"2. The Appellant entered the UK on 26 April 2010 with leave to enter as a Tier 4 student until 30 September 2011. This leave was extended through several applications until 14 September 2015. On 11 September 2015, the Appellant applied for leave to remain on private and family life grounds and this application was refused on 15 December 2015 with no in country right of appeal. The Appellant sought permission to appeal this decision which was refused.

3. On 06 August 2018, the Appellant claimed asylum. This claim was refused by the Respondent on 13 November 2020.

7. At paragraphs [8] to [11], Judge Thapar referred to the application for an adjournment, the relevant case management directions that had been made by the First-Tier Tribunal and set out her reasons for refusing the application:

"8. ... Mr Alam advised that he would be seeking an adjournment. The Appellant in the morning, showed Mr Alam entries made on the Appellant's Facebook account. Mr Alam could not ascertain the content of these posts as they are in Nepali, however the Appellant states they are comments he has made regarding the authorities in Nepal. The Appellant states these had been made in the last four or five months and he did not mention these any earlier as he was unsure whether they would be regarded as a reliable form of evidence. Mr Alam submitted the posts do corroborate the Appellant's claimed political opinion.

9. In refusing the request for an adjournment, I pointed out to the Appellant that this Tribunal issued directions on 14th June 2021 and 13 July 2021 requiring the Appellant to produce all documents which he sought to rely upon. Additionally, Judge Barker issued very detailed directions on 13 September 2021 again requiring the Appellant to produce a bundle of documents relied upon within 28 days and that the Appellant would not be afforded with any further opportunity to provide evidence. The Appellant has failed to comply with these three sets of directions. I acknowledge a witness statement on behalf of the Appellant was uploaded on 29 October 2021 and this is the only evidence produced by the Appellant.

10. The Appellant claims he was unaware that he was required to produce evidence earlier and that he did not mention his Facebook posts to his representatives. I found this was not a reasonable explanation for the Appellant's late request for an adjournment or for his failure to comply with Tribunal directions. The Appellant is aware of the reasons for the Respondent's refusal of his asylum claim, he is legally represented and

therefore he would have been aware of the directions set by the Tribunal on the three occasions detailed above. The Appellant's representatives had in fact sought an extension of time to provide further evidence on 28 October 2021 stating *"Further to the directions dated 22-10-2021, we have attended upon the Appellant, [the appellant], today. He has informed us that he is in the process of collating further very crucial relevant information and evidence in support of his above appeal. He requests the Tribunal to kindly allow him more time in the deadline of 29 Oct 2021 for further 10 days to comply with the directions, please."*

11. This request for further time was granted on 29 October 2021 and the Appellant was afforded until the 08 November 2021 to file his evidence. Despite having ample opportunity to provide evidence the Appellant has failed to do so. I have been provided with no reasonable explanation for this failure particularly given that the evidence was allegedly available four or five months ago. Having in mind the overriding objective and the Appellant's repeated failure to comply with Tribunal directions I refused the adjournment request."

8. In Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) it was held that 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. In SH (Afghanistan) v SSHD [2011] EWCA Civ 1284, at [13], the Court of Appeal confirmed that the sole test is whether it was unfair. The question for me is simply whether it was unfair for Judge Thapar to refuse the appellant the opportunity to obtain translations and rely upon Facebook posts which the appellant claimed corroborated his account in respect of his opposition to the authorities in Nepal. The question for me is not whether it was reasonably open to Judge Thapar to take the view that no such opportunity should be afforded to the appellant.
9. Nwaigwe is not however authority for the proposition that every refused application for an adjournment amounts to an error of law. There is a relevant procedural history here, and the decision of Judge Thapar to refuse the application must be considered in context. The decision under appeal was dated 13 November 2020 and a substantial delay had already occurred before the hearing of the appeal. The appellant was not responsible for that delay, but there was every opportunity during that period for the appellant to ensure that all the evidence that he wished to rely upon was available. A 'fair hearing' is a hearing that proceeds with fairness to both parties.. The Judge had in mind the overriding objective. In reaching her decision, Judge Thapar noted that counsel for the appellant was unable to ascertain the content of the posts the appellant was seeking to rely upon, as they are in Nepali. The extent to which the Facebook 'posts' were relevant to the issues was therefore unclear. Judge Thapar rejected the appellant's claim that he was unaware that he was required to

produce evidence earlier. On the undisputed chronology that is set out in the decision of Judge Thapar it is clear that the appellant was given every opportunity to provide the Tribunal with the evidence that he relied upon in support of his claim. In my judgement, the refusal of the application for an adjournment did not in all the circumstances result in the appellant being denied a fair hearing. The appellant may not agree with the approach adopted by the Judge, but there was nothing unfair in that approach when the decision is read in context.

10. In any event, I referred Ms Javed to the observations made by Judge Thapar in paragraph [14] of her decision. At paragraph [14(d)] she refers to the appellant's claim that he is politically active. She noted that the appellant's claim that he has come to the attention of the Nepalese authorities because he has published several articles, pamphlets and attended several protests. Ms Javed confirmed there was no evidence before the First-Tier Tribunal of the articles or pamphlets published by the appellant and that beyond the appellant's own assertion, there was no evidence before the Tribunal that he has come to the attention of the authorities. Although Judge Thapar had refused the application for an adjournment, at paragraph [14(d)] she referred to the evidence of the appellant and records that it was only after repeatedly being asked whether there were any other political activities undertaken by the appellant, did he assert that he was active on Facebook. Ms Javed also confirmed there was no objective evidence before the First-Tier Tribunal to establish that the Nepalese authorities actively monitor the activities of the Nepalese diaspora abroad, or that they have the capacity or ability to access a Facebook account.
11. I also reject the appellant's claims that Judge Thapar failed to consider the evidence of the appellant regarding his involvement with the 'King Saviour Party'. At paragraphs [14(b), (c), and (e)] of her decision, Judge Thapar summarised the claims made by the appellant regarding his involvement in the Kings Saviour Party. She was entitled to have regard to the inconsistencies in the appellant's account and to find that the appellant has failed to establish to the lower standard that the King's Saviour Party exists in Nepal or that he was a member for the reasons she set out.
12. Finally, I also reject the appellant's claim that judge Thapar failed to adequately consider the best interests of the appellant's five-year-old daughter, who was born in the UK and has never visited Nepal. The appellant's daughter was born in May 2016 and the only evidence before the Tribunal was that set out in the appellant's statement dated 29 October 2021. He said that his daughter was born in the UK and she has started full time education. At paragraph [22] Judge Thapar confirmed the best interests of the appellant's daughter are maintained with her remaining in the care of her parents. Ms Javed accepts there was no evidence before the Tribunal that the best interests of the child are served by anything other than remaining in the care of her parents, neither of whom have any form of settled status in the UK.

13. Judge Thapar carefully considered the claims advanced by the appellant and reached conclusions and findings that were open to her on the evidence before the Tribunal. She gives adequate reasons for the findings made. A fact-sensitive analysis was required. In my judgement, the findings made by Judge Thapar as to the international protection and Article 8 claims were rooted in the evidence before the Tribunal. Here, it cannot be said that the Judge's analysis of the evidence is irrational or perverse. The Judge did not consider irrelevant factors, and the weight that she attached to the evidence either individually or cumulatively, was a matter for her. I am satisfied that the Judge's decision is a sufficiently reasoned decision that was open to her on the evidence.
14. It follows that I dismiss the appeal.

Notice of Decision

15. The appeal is dismissed.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 June 2023