IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002390

First-tier Tribunal No: HU/58973/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 18th of September 2024

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

VIKRAMJIT SINGH

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Chohan, instructed by No 12 Chambers
For the Respondent: Mr Wain, Senior Presenting Officer

Heard at Field House on 5 September 2024

DECISION AND REASONS

1. The appellant appeals with the permission of First-tier Tribunal Judge Chowdhury against the decision of First-tier Tribunal Judge K Swinnerton ("the judge"). By his decision of 15 March 2024, the judge dismissed the appellant's appeal against the respondent's refusal of his human rights claim.

Background

2. The appellant is an Indian national who was born on 4 March 1986. He claims to have entered the United Kingdom lawfully, as a student, on 25 October 2009. He overstayed at the end of his visa and was served with a notice that he was liable to removal as an overstayer in 2013. He made an asylum claim in 2016. That was refused in December 2010 and an appeal against the refusal was dismissed on 14 February 2020.
3. The appellant then applied for leave to remain as the spouse of a settled person. That application was successful, and he was granted leave to remain from 26 February 2021 to 25 August 2022. On 18 August 2022, the appellant applied for

further leave to remain on Article 8 ECHR grounds. He was assisted in making that application by No 12 Chambers, who have continued to represent him to date.

4. The respondent refused the application on family life grounds because the appellant's relationship with his spouse was no longer subsisting and because there was no evidence to show that the appellant had a relationship with his ex-wife's child. The respondent considered whether there were any exceptional circumstances which warranted a grant of leave on Article 8 ECHR grounds and concluded that there were not. She noted that the appellant suffered from some mental health problems but concluded that adequate treatment for those complaints would be available in India. She did not accept that there would be very significant obstacles to the appellant's reintegration to India, or that his removal would be in breach of Article 3 ECHR.

The Appeal to the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal. A bundle of 119 pages was prepared, containing a skeleton argument, witness statements made by the appellant and four witnesses, a reference letter, medical evidence (including an expert report from a Consultant Psychiatrist, Dr Hussain) and a good deal of evidence of the financial and other circumstances of the appellant and his ex-wife. The skeleton argument helpfully refined the issues. It was accepted that there could be no family life claim for the reasons given in the refusal letter. The appeal was pursued on private life grounds (paragraph 276ADE of the Immigration Rules) and with reference to Articles 3 and 8 ECHR.

6. The appeal was listed to be heard at the Hatton Cross hearing centre at 10am on 12 March 2024. The appeal had been case managed to that point, including a case management appointment before a Legal Officer on 23 January 2024.

7. The appeal was called on in the morning of 12 March 2024. The respondent was represented by a Presenting Officer. The judge recorded that there was no attendance by or on behalf of the appellant, and that the Tribunal had not been informed of any reason for that non-attendance. Shortly before 1030, an application was uploaded to the MyHMCTS platform. It was in the following terms:

> "Pursuant to the emails sent to 'HattonX.Goldfax@Justice.gov.uk', please see attached proof for our client's condition- he has just provided us with this medical letter which shows that he was taken to the hospital yesterday at 11pm and that he was only discharged around half an hour ago due to a breathing/chest problem which he had.
>
> The application is being made via this portal so that an accurate and updated record can be kept. In light of thid [sic], it is requested that the hearing is adjourned."

8. Appended to the application was an image of a discharge note from The Hillingdon Hospital. The note bore the date of 12 March 2024 and was timed at 0956. It named the appellant and stated that he had attended Accident and Emergency on 11 March 2024 at 2326, and had been 'Discharged with Consent'

on 12 March 2024 at 0945. Under the sub-heading 'Diagnosis', the note stated as follows:

> "12-Mar-2024 No abnormality detected (confirmed) – Presented on: 12 Mar 2024
> 12-Mar-2024 Referral to service (confirmed) – Presented on: 12 Mar 2024."

9. The judge refused the application for an adjournment and decided to proceed with the hearing in the absence of the appellant. He gave the following reasons for doing so:

> "[4] During the course of the morning, the Tribunal was informed of an application to adjourn the hearing having been uploaded directly on the portal on the basis that the Appellant had attended Accident & Emergency with a breathing/chest problem at 11pm on 11 March 2024 (the day prior to the hearing). The Appellant had just been discharged and was not able to attend the hearing. The document uploaded with the application on the portal referred to the Appellant being admitted at 23:26 on 11 March 2024 and to being discharged at 09:45 on 12 March 2024. Under the section entitled 'Diagnosis', it was stated: "No abnormality detected".
>
> [5] The document uploaded did not state that the Appellant was unable to attend the hearing. It did not refer to any medical problem of the Appellant preventing his attendance at the hearing. I had arranged the three cases in my list to allow for the Appellant's case to start in the afternoon. I took into account that the application for leave of the Appellant was made more than 18 months ago, in August 2022, and that the basis of his application had changed materially in light of his no longer being in a relationship with his former partner. I had been provided with a hearing bundle and a separate bundle of the Appellant of 120 pages (uploaded recently on 7 March 2024) which contained a recent medical report. I decided that the appeal would proceed in the absence of the Appellant."

10. The judge then heard submissions from the Presenting Officer before reserving his decision.

11. In his reserved decision, the judge accepted that the appellant continued to suffer from mental health problems but noted that he was not taking any medication for those issues, and that his circumstances did not come close to meeting the Article 3 ECHR standard. The judge did not accept that the appellant had no ties to India and he saw 'no reason' why the appellant could not return and continue his life there. He did not accept that there were very significant obstacles to the appellant's reintegration. There was no family life claim but the judge accepted that the appellant had a limited private life in the UK. He concluded that it was proportionate for the respondent to interfere with that private life by removing the appellant. He therefore dismissed the appeal.

The Appeal to the Upper Tribunal

12. A single ground of appeal was advanced before Judge Chowdhury. It was submitted that the judge's decision to proceed with the appeal in the absence of

the appellant was procedurally unfair. Judge Chowdhury considered that to be arguable.

13. I heard concise submissions from Mr Chohan for the appellant and Mr Wain for the respondent. I am grateful to them for their economy and focus.

14. Mr Chohan submitted that there was clear evidence before the FtT to show that the appellant had spent the night in A&E and that he was unfit to attend the hearing. He had been denied the opportunity to attend the hearing and to give oral evidence, as had his witnesses. In response to my question, Mr Chohan stated that someone at No 12 Chambers (to which Mr Chohan is not professionally affiliated) had told the witnesses not to attend. He was not able to explain why no representative from No 12 Chambers had attended before the judge, particularly as the application to adjourn had only been uploaded at 1030. Legal submissions could have been made before the judge but the appellant and the witnesses had not attended to give oral evidence. The decision to refuse the adjournment was unfair by reference to *Nwaigwe (adjournment: fairness)* [2014] UKUT 418 (IAC) and *SH (Afghanistan) v SSHD* [2011] EWCA Civ 1284.

15. For the respondent, Mr Wain submitted that there had been no unfairness in the FtT and that the judge's decision should be upheld. The judge's analysis at [4]-[5] was impeccable. The appellant could have attended the hearing at 2pm. There was no evidence to show that he was unfit to do so. He had chosen not to attend, as had his witnesses and his representatives.

16. In reply, Mr Chohan submitted that the appellant had been in hospital all night. He was evidently unfit to attend and the judge had unlawfully 'second guessed' the medical evidence.

17. I reserved my decision at the end of the submissions.

Analysis

18. In *SH (Afghanistan)*, the Court of Appeal (Moses LJ, with whom Patten and Ward LJJ agreed) explained that the question in a case such as this is whether it was unfair to refuse the adjournment application; the question is not whether it was reasonably open to the judge to proceed with the hearing: [14]. A decision reached by the adoption of an unfair procedure must be set aside unless it can be shown that it would be pointless to do so because the result would inevitably be the same: [14]. On the facts of that case, the Court of Appeal considered that it would be pointless to remit the appeal to be heard afresh and it dismissed the appeal despite the errors into which the FtT and the Upper Tribunal had fallen: [17]-[24].

19. In *Nwaigwe*, McCloskey J underlined that the question in such a case was not whether the FtT had acted reasonably. As Moses LJ had stated in *SH (Afghanistan)*, the test to be applied was one of fairness: was there any deprivation of the affected party's right to a fair hearing?

20. In my judgment, it was fair for the judge to proceed with the hearing in the absence of the appellant. As Mr Wain noted, there was no medical evidence to suggest that the appellant was unfit to attend the hearing. He had been discharged from Hillingdon Hospital that morning and the evidence showed that no abnormality had been detected. Had the appellant been unfit to attend the

hearing nevertheless, the hospital could have provided a note to that effect but there was no such evidence. Mr Chohan submitted that the appellant would obviously have been unfit to attend the hearing because he had spent the entire night in A & E. I accept that he would have been tired but there is no proper basis for concluding that he was unfit to attend.

21. I do not understand why the appellant's representatives did not attend the hearing. The application to adjourn was made after 10am but the hearing was listed at that time. There is no evidence from No 12 Chambers to explain the absence of the representative at the time listed for the hearing. Nor do I understand the basis upon which the appellant's witnesses were apparently 'stood down' from attending. Be that as it may, the reality of this case is that the judge did not resolve to proceed at 10am. He resolved to proceed at 2pm, thereby giving the appellant, his witnesses and his representative additional time in which to attend the hearing centre. Given their non-attendance, I consider that it was entirely fair for the judge to proceed. As Mr Wain submitted, it seems that all those concerned with the appellant's case had decided unilaterally that they need not attend the hearing because the appellant had spent some time in hospital. It was fair in those circumstances for the judge to proceed with the hearing in their absence.

22. Mr Chohan submitted that the judge had 'denied' the appellant the opportunity to give oral evidence. I do not consider that to be correct. The appellant chose not to attend the hearing; the judge would clearly have heard him if he had attended at 2pm. The same submission was made in respect of the appellant's witnesses but, as I have observed above, the reasons why they did not attend before the FtT are wholly unclear. The judge did not 'deny' them the opportunity to give evidence; they were seemingly advised not to attend. The same submission was made in the grounds of appeal in respect of the appellant's representatives but, as Mr Chohan realistically accepted during his oral submissions, the reality is that there is no explanation at all for their absence before the judge.

23. In my judgment, there was no demonstrable unfairness in the judge deciding to proceed with the hearing in the absence of the appellant, his witnesses and his representative in circumstances in which there was no adequate explanation for their absence.

24. Had I concluded otherwise, I would have decided on the facts of this case that any such error was immaterial to the outcome of the appeal. The judge essentially took the appellant's case at its highest and found that he could not succeed under the Immigration Rules or the ECHR. Having considered the evidence for myself, I cannot see how a judge of the First-tier Tribunal directing themselves rationally and in accordance with the law could have reached a different conclusion. I say that for the following reasons.

25. There was no viable claim under Appendix FM of the Immigration Rules because the relationship between the appellant and his ex-wife had broken down. There was no reliance on the appellant's relationship with his ex-wife's child, presumably because she had attained her majority and because of the acrimony of the separation.

26. There was no proper basis upon which a judge who was aware of the law including *SSHD v Kamara* [2016] EWCA Civ 813; [2016] 4 WLR 152 and *Parveen v SSHD* [2018] EWCA Civ 932 could have concluded that there were very

significant obstacles to the appellant's re-integration to India. He has evidently been in the UK for some years and is said to have lost his ties to India and he suffers from untreated mental health problems but, as the judge found, there is no reason to think that any difficulties he would encounter in that populous and thriving country would meet the high threshold in the Rules. He is a 38 year old man who lived in that country until 2009. He returned for a month-long visit in 2021. He speaks Punjabi and English fluently and there is no reason to think that he would encounter *very significant* obstacles to reintegration.

27. There was no viable Article 3 ECHR claim here. Whilst the appellant has suffered with depression and other mental health problems, these complaints fall far short of the threshold considered in *AM (Zimbabwe) v SSHD* [2020] UKSC 17; [2021] AC 633.

28. As for Article 8 ECHR, what is required is obviously a holistic analysis, balancing those matters which militate for and against the appellant's removal. Any judge taking proper account of all that was said in the appellant's favour could not rationally hold that the public interest in immigration control was outweighed by the appellant's private life, which was established when his immigration status was precarious, as that term is construed at [44] of *Rhuppiah v SSHD* [2018] UKSC 58; [2019] HRLR 4. Taking that into account, and taking into account the legitimate public interest in the enforcement of immigration control, there was only one rational answer to the proportionality analysis in this case.

29. In the circumstances, I find that there was no error of law on the part of the FtT and that, had I concluded otherwise, I would have declined to set aside the FtT's decision in any event.

Notice of Decision

The appellant's appeal is dismissed. The decision of the First-tier Tribunal stands.

Mark Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 September 2024