



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003516

First-tier Tribunal No: PA/02199/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 10th of January 2025

Before

UPPER TRIBUNAL JUDGE NEVILLE
DEPUTY UPPER TRIBUNAL JUDGE WELSH

Between

FT
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Unrepresented and did not attend

For the Respondent: Ms Nolan, Senior Home Office Presenting Officer

Heard at Field House on 4 November 2024

DECISION AND REASONS

Anonymity Order:

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant or members of her family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. We make this order because the Appellant seeks international protection and so is entitled to privacy.

Introduction

1. This is an appeal against a decision of First-tier Tribunal Judge Reed (“the Judge”), promulgated on 9 May 2024. By that decision, the Judge dismissed the Appellant’s appeal against the decision of the Respondent to refuse her protection and human rights claim.

Factual background

2. The Appellant is a national of Albania. The Respondent accepted that she was a victim of modern slavery on the basis that she had been forced to work as a prostitute but refused her claim for protection on the grounds that (i) she was not at risk on return from the traffickers (ii) she could internally relocate and (iii) there is sufficiency of protection.

Proceedings in the First-tier Tribunal

3. The first substantive listing of the appeal was on 14 March 2024 before First-tier Tribunal Judge M Robertson. The Appellant did not attend the hearing and had not submitted an appeal bundle. The record of proceedings of Tribunal Judge Robertson helpfully records the enquiries that were made to establish why the Appellant was not in attendance. The clerk called the telephone number that had been provided by the Appellant and spoke to a person who identified herself as a friend of the Appellant. The friend told the clerk that the Appellant had a legal representative and that this representative had told the Appellant that he was going to ask for an adjournment. The clerk told the friend to tell the representative to send the adjournment request in writing to the Tribunal. The hearing did not go ahead because the Respondent applied successfully for adjournment on the ground that a review of the refusal decision was going to be undertaken with a view to applying to withdraw the concession that the Appellant was a victim of modern slavery.
4. The hearing before the Judge took place on 18 April 2024. By this date, the Appellant had still not filed or served an appeal bundle. She also did not attend the hearing. The Judge proceeded in absence and recorded this decision at [22]:

The Appellant did not attend and was not represented. A notice of hearing had been sent to the Appellant on 14 March 2024 and I was satisfied that she was aware of the hearing. It was in the interests of justice to proceed in the Appellant’s absence.

5. The Judge went on to make findings in relation to the substance of the appeal. He concluded that:
 - (1) the Appellant is not at real risk of serious harm from the traffickers, in the sense of a risk or retributive action [39];
 - (2) there is sufficiency of protection [42]; and
 - (3) the Appellant could internally relocate [46].

Grounds of appeal and grant of permission

6. The Appellant drafted the grounds of appeal herself. She pleaded:

- (1) Ground 1 - "I am not happy with the decision of the Judge to refuse my appeal because I did not have a chance to have my case prepared. I had asked the court for an adjournment by email before my hearing since I did not have a legal representative".
- (2) Ground 2 - both her and her child would be at risk on return from the traffickers.
- (3) Ground 3 - she could not internally relocate because (i) the traffickers with find her and (ii) she would not be able to provide for her child because, as an unmarried mother, she would face stigma and she would not have any support from friends and family.

7. Permission was granted on all grounds, on 2 September 2024, by UTJ Landes. In granting permission, UTJ Landes stated:

The Appellant says in the grounds that she had asked the court for an adjournment by email before the hearing because she did not have a representative. I have asked the court file to be checked and the file does not record any correspondence been received between 14 March and the hearing on 18 April 2024, or indeed after the hearing.

If the Appellant did ask for an adjournment and that did not for some reason reach the Tribunal so that it was not considered, it is arguable that there was a procedural irregularity. I would expect the Appellant to be able to produce evidence that she did indeed email the Tribunal with such a request and also to explain why, she apparently having received no answer to the request, she did not attend the hearing on 18 April 2024.

... bearing in mind the Appellant is unrepresented and was not present at the hearing, I do not limit the grounds which may be argued.

8. UTJ Landes also made the following directions which were incorporated into the grant of permission:

Directions to the Appellant

- 1) You should note that if you do not appear at the hearing listed in the Upper Tribunal a decision may be made in your absence. Unless you are told that the hearing is not going ahead for any reason, you must assume it will be taking place and that you should attend. An Albanian interpreter will be provided for you.
- 2) Please file with the Upper Tribunal no later than 10 working days before the hearing a copy of the email you sent to the First-tier Tribunal requesting an adjournment including the address to which the email was sent, and the date and time at which the email was sent. Please send a copy to the Home Office.
- 3) Please file with the Upper Tribunal no later than 10 working days before the hearing a written explanation why you did not attend the hearing on 18 April. Please send a copy to the Home Office.

Upper Tribunal hearing

9. By the date of the hearing, the Appellant had not complied with the directions of UTJ Landes, either in respect of sending any documents to the Upper Tribunal or, as confirmed by Ms Nolan, to the Respondent. We note that this direction has still not been complied with at the time of the writing of this decision.
10. The Appellant did not attend the hearing. Our clerk telephoned her and spoke to her. Our clerk informed us that there were communication difficulties caused by

the language barrier but his understanding of the conversation that took place was that the Appellant said that she knew the hearing was today but that she was not coming because she could not get a new barrister. The clerk told her that the hearing could go ahead without her. He asked her if she wanted to apply for more time to get a barrister but she said she was having trouble understanding.

11. Pursuant to rule 38 of The Tribunal Procedure (Upper Tribunal) Rules 2008, we decided to proceed in the absence of the Appellant. We reached this conclusion for the following reasons.
12. We were satisfied that the Appellant had been notified of the hearing because (i) the hearing notice was sent, on 8 October 2024, to her email address and (ii) it was apparent from her communication with our clerk that she was aware that the hearing was due to take place today. Alternatively, we were satisfied that reasonable steps had been taken to notify the Appellant of the hearing by reason of the sending of the hearing notice to the email address that the Appellant had provided.
13. We were satisfied that it was the interests of justice to proceed in her absence taking into account the following factors:
 - (1) the Appellant had not requested an adjournment;
 - (2) her not attending because she was not legally represented was not a good reason for her absence;
 - (3) this was the third occasion on which the Appellant had not attended a Tribunal hearing (the other two occasions being her substantive appeal hearings at the First-tier Tribunal). We therefore formed the view that an adjournment would not secure the Appellant's attendance on any future occasion;
 - (4) we considered whether there was any basis for us concluding that the Appellant, by reason of her first language being Albanian, did not understand that she needed to attend the hearing. However, having reviewed the grounds of appeal (both those sent to the First-tier Tribunal and the Upper Tribunal) and taking into account that the Appellant was able to express herself, with difficulty, to our clerk, we formed the view that she either had sufficient grasp of English to understand the need for her attendance or was being assisted by another who could have explained the contents of the written communications from the Upper Tribunal.
14. Ms Nolan relied upon the rule 24 response to the grounds and made brief supplementary oral submissions.

Decision

Ground 1

15. For the reasons set out below, we conclude that the Judge did not err in law by proceeding in the absence of the Appellant. In reaching this decision, we consider and apply the guidance of the Upper Tribunal in Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC).
16. The Judge's assessment that the Appellant was aware that the hearing was listed was plainly correct, given in her grounds of appeal the Appellant claims to have emailed the Tribunal, prior to the hearing date, with an adjournment request.

17. The decision of the Judge, that it was in the interests of justice to proceed in the Appellant's absence, is one that was reasonably open to him and did not deprive the Appellant of a fair hearing because:
- (1) We are not satisfied that the Appellant did in fact make an application to adjourn in advance of the hearing because she has been given every opportunity to supply the evidence to support her assertion but has failed to do so.
 - (2) The Judge would have had no reason to believe that adjourning the hearing would result in the Appellant attending on any future occasion given that the Appellant had not engaged in any meaningful way with the appeal proceedings. This was the second time that she had failed to attend her hearing and she had not complied with directions to file and serve an appeal bundle.

Grounds 2 and 3

18. We can only interfere with the decision of the Judge if a material error of law is disclosed. Though the grounds make no complaint about the Judge's conclusion in relation to sufficiency of protection, we have also reviewed this aspect of his decision.
19. The Judge correctly reminded himself of the relevant law [27-29] including the applicable country guidance case at [16, 36]. He considered and assessed the evidence at [32-47] and gave sound reasons for accepting or rejecting the evidence. In a judgment, the conclusion he reached is one that was reasonably open to him on the evidence. We therefore conclude that the decision discloses no material error of law.

Notice of Decision

20. The decision of the First-tier Tribunal did not involve the making of a material error on a point of law and so the decision stands.

C E Welsh

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 December 2024