



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

Appeal Number: AA/00444/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18<sup>th</sup> May 2014**

**Determination Sent**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MR YASIR ALAM CHOUDHRY  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr N Bramble, Home Office Presenting Officer

For the Respondent: No attendance

**DETERMINATION AND REASONS**

1. The Appellant is a citizen of Pakistan born on 20<sup>th</sup> August 1994. The Appellant arrived in the UK on a valid student visa which was valid from 9<sup>th</sup> July 2007 until 31<sup>st</sup> December 2008. Following the expiry of that visa the Appellant made no attempts to legalise his stay until encountered by immigration officials. On 25<sup>th</sup> July 2012 the Appellant claimed asylum. His

claim was based on the purported fear that if returned to Pakistan he would be forcibly asked to undergo training by the JKLF (Jammu Kashmir Liberation Front) also known as AJKLF. That application was refused on 11<sup>th</sup> July 2013.

2. The Appellant renewed his application for asylum and his renewed application was dismissed by a Notice of Refusal dated 10<sup>th</sup> January 2014. The Appellant appealed and the appeal came before Immigration Judge Dennis sitting at Hatton Cross on 20<sup>th</sup> February 2014. That appeal was dismissed on asylum grounds and on human rights grounds.
3. On 7<sup>th</sup> April 2014 the Appellant lodged Grounds of Appeal to the Upper Tribunal. Those grounds noted that the Appellant had not attended before the First-tier Tribunal and submitted that the First-tier Tribunal Judge had erred in failing to take medical evidence into account or place weight, if any, on a certificate submitted on 20<sup>th</sup> February 2014 entitled MED3 statement of fitness to work.
4. On 28<sup>th</sup> April 2014 First-tier Tribunal Judge Chambers granted permission to appeal. In granting permission Judge Chambers noted that Judge Dennis had taken into account the medical evidence and the medical certificate signed by a GP on the day of the hearing stating the Appellant was unable to attend on medical grounds and that he considered the grounds to be arguable.
5. The matter was listed for appeal before the Upper Tribunal for 18<sup>th</sup> July. That notice was sent by first class post to the Appellant on 12<sup>th</sup> June 2014. On 16<sup>th</sup> July the Appellant wrote to the Tribunal stating that he had been unable to instruct legal representatives due to his financial difficulties and contended that his asylum case was difficult and complex and that he was in the process of obtaining money from his family in Pakistan for his legal fees. He requested an adjournment of at least two months contending that such an adjournment would not prejudice the Respondent.
6. That letter was placed before an Upper Tribunal Judge and by a letter dated 17<sup>th</sup> July to the Appellant he was advised that the application for an adjournment was refused, the Appellant having known the date of hearing for almost a month.
7. It is on that basis that the appeal comes before me. The Appellant does not appear. At 11.10am I released the requested interpreter. The Secretary of State appears by her Home Office Presenting Office Mr Bramble.

### **Submissions/Discussion**

8. Mr Bramble submits that there is no material error of law in the decision of the First-tier Tribunal Judge and that all the Appellant has done is to file a form MED3 – statement of fitness for work for social security or statutory sick pay dated 20<sup>th</sup> February 2014. That certificate signed by a doctor is

for seven days stating that the Appellant would be unable to attend the hearing as unwell and advised to take bed rest and fluids. He points out that the Appellant has given no other evidence as to why he could not attend court and that the judge correctly refused to adjourn and that he has not in any way materially erred in law in formulating his determination.

## **The Law**

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

## **Findings**

11. At paragraph 2 of his determination Judge Dennis had given a very detailed description as to the process he went through in determining whether or not to grant an adjournment. He has referred in detail to the form MED3 but notes that the form does nothing more than identification of the condition as diarrhoea and that he is not prepared to accept that as a valid medical excuse for non-attendance of a hearing three days subsequent. He notes that there is no suggestion of palliative medication, whether prescription or over the counter and he was not satisfied that the condition was so serious or debilitating as to preclude the Appellant's attendance at court.
12. In addition it is interesting to note that the Appellant's evidence appears to indicate that within seven days of receipt of the certificate, although not well enough to attend three days later, that within seven days he was well enough to get married. No further medical evidence is produced. I find

that the judge was entitled to make the findings of fact that he did and to draw the conclusions that he made. In such circumstances the determination discloses no material error of law and the appeal of the Appellant is dismissed and the decision of the First-tier Tribunal is maintained.

## **Decision**

13. The determination of the First-tier Tribunal Judge does not disclose any material error of law and the Appellant's appeal is therefore dismissed.
14. The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. No application is made to vary that order and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

31<sup>st</sup> July 2014