



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number HU/12749/2016
HU/12754/2016

THE IMMIGRATION ACTS

Heard at Field House
On 23rd June 2018

Decision and Reasons Promulgated
On 30th July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

**RAHMAN RAJIB MAHMOOD
SYEEDA MUNIA DILSHAD TINA
(ANONYMITY DIRECTION NOT MADE)**

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Hasan (Legal Representative, Universal Solicitors)
For the Respondent: Ms K Pal (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellants are husband and wife and citizens of Bangladesh. The Appellants sought leave to remain in the UK in a human rights application which was refused by the Secretary of State. Their appeals were commenced by notices of the 17th of May 2016. The Notice of Hearing was sent out on the 25th of July 2017 giving a hearing date of the 26th of January 2018 at Hatton Cross.
2. On the 8th of January 2018 the Appellant's solicitors wrote to the First-tier Tribunal stating that both Appellants wished to attend the hearing and requesting an adjournment. The application was on the basis that the Second Appellant had an operation scheduled for the 25th of January 2018, a letter dated the 9th of December 2017 confirming that was enclosed. By Notice of the 10th of January 2018 that application was refused the reasons given being "The reason for refusal can be settle at the beginning of the substantive hearing. No CMR is necessary."

3. The application was renewed by the Appellants' solicitors by letter of the 23rd of January 2018. In addition to the original hospital letter of the 19th of December 2017 confirming the appointment the application was supported by a GP's letter of the 19th of January 2018. The letter confirmed that the Second Appellant was to have an operation on the 25th of January 2018 but the nature of the issue or the operation was not explained. The letter went on to state that the Second Appellant would need rest for at least 2 weeks or longer and that she would need her husband's support during and after the operation. By Notice of the 24th of January 2018 that application was refused as "Alternative care should be arranged for the second appellant, or the appeal can be decided on submissions."
4. A further application was received by fax dated the 24th of January 2018. The covering letter of that date stated that alternative care arrangements had been tried but the Appellants had not been able to find an alternative. The letter went on to state that the First Appellant was also seriously ill and would not be able to give evidence on the 26th of January reliance being placed on the sick note of the 22nd of January 2018 which was attached. It was submitted that the presence of the Appellants was vital to defend the case properly and an adjournment requested.
5. By Notice of the 25th of January 2018 that application was refused. The Notice stated "Medical evidence provided states appellant is not fit to work. However, appellant will not be required to work." In those circumstances the appeals remained as listed.
6. At the hearing on the 26th of January 2018 the Appellants did not attend but were represented by Mr Hasan who also attended before the Upper Tribunal. He renewed the application to adjourn. This was discussed by the First-tier Tribunal Judge in paragraph 3 of the decision. In that paragraph he referred to the previous applications and refusals but did not refer to the basis on which the earlier applications had been made. Referring to the sick note submitted in respect of the First Appellant the Judge observed that "The medical note relied upon did not satisfactorily excuse the first appellant's attendance at the hearing and the appellants and their representatives had been aware of this when their most recent adjournment application had been refused on 25 January." The Appellants had been aware of the situation, had had the opportunity to attend and there was a bundle of documents before the Tribunal that they intended to rely on. In those circumstances Judge Pedro decided that the Appellant could be fairly determined and informed Mr Hasan that he could make submissions. At that stage Mr Hasan withdrew apparently having no instructions to remain.
7. The remainder of the decision considered the First Appellant's medical history, treatment, prognosis and the availability of care in Bangladesh along with the Appellants circumstances in the UK and in Bangladesh. The Judge found that the Appellants were not entitled to remain in the UK and that removal would be proportionate.
8. The grounds of application for permission to appeal to the Upper Tribunal argue that the Appellants were wrongly refused an adjournment and that in the circumstances there was procedural irregularity. It was submitted that if he had been at the hearing the First Appellant would have given oral evidence that would have gone to the issues that the Judge had to decide. It is also argued that the medical note of the 22nd of January in respect of the First Appellant should have led to an adjournment being granted. It is also argued that the decision breached article 3 in respect of the First Appellant's medical needs and article 8 had not been properly considered given their 9 years in the UK.

9. At the hearing Mr Hasan relied on the grounds arguing that the Judge had not considered all the documents that had been submitted in support of the adjournment applications and that the previous refusals had also been wrong. With regard to the First Appellant the Judge had not taken into account the need for rest. Mr Hasan also referred to a letter from the First Appellant's GP of the 17th of April 2018 which supported the medical note of the 22nd of January 2018. This had not been seen by the Home Office, copies were obtained. The Home Office maintained that the Judge had been entitled to continue on the information available.
10. This appeal turns on the issue of the adjournment. Having read the decision I am satisfied that the Judge properly considered all of the evidence that had been presented with regard to the First Appellant's health and treatment and the circumstances both in the UK and in Bangladesh. In considering article 8 the Judge had regard to the relevant factors including the precarious nature of the Appellants' time in the UK. Having found that the Appellants did not meet the Immigration Rules, and considering sections 117A and 117B, the Judge was entitled to find that there were no compelling circumstances and the grounds do not point to any.
11. Turning to the central issue I note that the appeal was launched in mid-2016 and that the Appellants had had well over a year in which to prepare for the appeal and the notice of the hearing had given them 6 months warning of the date when they were due to appear. There was a delay between the date of the operation and the first application being made. There is little information about the nature of the Second Appellant's operation and nothing was put before the Judge to suggest that her condition could or would have a bearing on the overall appeal. It was noted correctly that the Second Appellant's position depended on that of the First Appellant.
12. So far as the First Appellant is concerned I agree with the individual who made the decision to refuse the application to adjourn and with Judge Pedro that the sick note of the 22nd of January was inadequate to justify an adjournment. All that the note indicated was that the First Appellant was said to have "severe back pain", a box was ticked to the effect that he was not fit for work and in the comments section it was stated that the Appellant "needs rest". There was nothing to show that the First Appellant could not attend the hearing, that he was not fit to give evidence or otherwise unable to participate in the hearing. As had been observed in the initial refusal of the application the Appellant was not being asked to work.
13. This view is reinforced rather than undermined by the letter from the GP of the 17th of April 2018. Having apparently lifted a heavy object the Appellant had been unable to sleep due to pain and had some difficulty standing. He was given 400mg of Ibuprofen and advised to take rest. In submissions Mr Hasan referred to bed rest but there is nothing in any of the documentation that supports that. The Judge's observations in paragraph 3 that the evidence did not excuse the First Appellant from attendance had not been addressed in this letter which as I have said tends to undermine rather than advance the Appellant's case.
14. In submissions Mr Hasan had referred to the Second Appellant remaining in hospital on the day of the hearing. If that was the case then the First Appellant would not have been needed to provide care for her and if he had the bad back described it is difficult to see what care he could have provided anyway.
15. The Appellants and representatives were aware that an adjournment had been refused and why and that the appeal could be disposed of following submissions. The Appellants and their representatives had had time to submit further evidence by way of expanded witness statements

had they chosen to and/or further and better evidence to support the applications could have been obtained. I note that the later evidence would still not justify the First Appellant's absence.

16. On the information that Judge Pedro had and given the history of the case I am satisfied that Judge Pedro was entitled to continue with the hearing in the absence of the Appellants. It is regrettable that Mr Hasan did not take the opportunity to make submissions on his clients' behalf but the decision of the Judge shows that all relevant matters were considered properly and adequately. The decision of Judge Pedro contains no error of law and it remains as the disposal of the appeals in this case.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In dismissing this appeal I make no fee award.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 23rd July 2018