



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10805/2017

THE IMMIGRATION ACTS

Heard at Field House
On 19 March 2018

Decision & Reasons Promulgated
On 22 March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

HA (PAKISTAN)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hyder, Legal Representative, Reza Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals from the decision of First-tier Tribunal Judge Aujla sitting at Taylor House on 22 November 2017, whereby he refused a request for the hearing to be adjourned, and he went on to dismiss on the merits the appellant's appeal against the decision of the respondent to refuse his protection and human rights claims. The First-tier Tribunal made an anonymity direction, and I consider that it is appropriate that the appellant's anonymity is maintained for these proceedings in the Upper Tribunal.

The Reasons for the Grant of Permission to Appeal

2. On 10 January 2018, First-tier Tribunal Judge Robertson granted the appellant permission to appeal to the Upper Tribunal for the following reasons:

“There is some arguable merit in the grounds because, given the sick note provided to the Judge indicated that the Appellant was suffering from diarrhoea and vomiting, it may be argued that this would indicate why he would be unable to attend the hearing. It is arguable that this resulted in an arguable error of law in that the Appellant was not given the opportunity to put his case before The Tribunal.”

Relevant Background Facts

3. The appellant is a national of Pakistan, whose date of birth is 3 June 1992. He arrived in the UK in 2011 with valid entry clearance as a student. He then overstayed, and he was served with administrative removal papers as an overstayer on 4 August 2016. He claimed asylum in 2017. He said that he had fled Pakistan in 2011 to escape local problems with the Taliban (because he had ceased attending a madrassa) and also because he had been involved with a land dispute with his cousin, who had unlawfully seized a quarter of an acre of land worth £9,000 which belonged to him. The appellant was given a screening interview on 11 April 2017, and he attended a substantive asylum interview on 18 September 2017.
4. On 10 October 2017 the Secretary of State gave her reasons for refusing to recognise him as a refugee. Firstly, his account was internally inconsistent, implausible and lacking in detail. Secondly, his claimed fear of the Taliban and his cousin on return was neither genuine nor objectively well-founded, as there was sufficient protection available to him from the Pakistani authorities and because he could reasonably relocate elsewhere in Pakistan to avoid his cousin and others with whom he claimed to have had problems with in the past.
5. On 25 October 2017 the appellant and his solicitors were notified by first class post of both the date of the pre-hearing review and the date of the substantive hearing. Directions were also issued on the same date requiring the appellant to serve on the Tribunal and HOPO unit the evidence upon which he wished to rely at the substantive hearing.

The Hearing before, and the Decision of, the First-tier Tribunal

6. No bundle of documents was filed with the Tribunal pursuant to the directions given on 25 October 2017.
7. On 21 November 2017, the Appellant faxed an adjournment request to the Tribunal. He produced a sick notice from his GP dated 21 November 2017 certifying that he was unfit to work from 16 November 2017 to 24 November 2017 and in his covering letter he said that due to his serious diarrhoea and vomiting he had not been able to attend at the offices of his solicitors to prepare his appeal statement and bundle of documents.

8. At the outset of the hearing on 22 November 2017, Mr Hussein of Reza Solicitors renewed the adjournment request. As he explained in his subsequent decision at [15], the Judge put the matter back for Mr Hussein to make further inquiries because (a) the sick notice did not indicate that the appellant was unfit to travel to court and give evidence; (b) there had been a total lack of preparation for the hearing and (c) the appellant had an adverse immigration history, including a past record of absconding.
9. On the resumption of the hearing, Mr Hussein was unable to confirm that the appellant had seen a doctor on 21 November 2017 or that, if he had, he had told the doctor that he was due to attend court. Mr Hussein agreed that, as the appellant was not working, the sick notice was not relevant. He also agreed that there was no explanation as to why the appellant had not provided instructions to his firm before 16 November 2017 to enable them to prepare his case.
10. Mr Mavrantonis, Presenting Officer, strongly opposed the adjournment request. He challenged the genuineness of the claim that the appellant was truly unwell and therefore unable to attend the hearing.
11. Having heard from both representatives, the Judge ruled against the adjournment request. In his subsequent decision at paragraphs [13] to [20]., he devoted over two closely typed pages to the issue, setting out very fully the evidence tendered by the appellant, the arguments advanced by the Presenting Officer and his reasons for refusing the adjournment.

The Hearing in the Upper Tribunal

12. At the hearing before me to determine whether an error of law was made out, Mr Hyder developed the arguments advanced in the grounds of appeal to the Upper Tribunal. The appellant had disclosed his GP medical record which showed that he had seen a doctor on 21 November 2017. So the Judge had been wrong to question whether the appellant had seen a doctor. Mr Hyder agreed that the same record also showed that the appellant had not attended for a follow-up appointment on 24 November 2017, as he had indicated that he was going to do when applying for the adjournment.
13. Ms Everett submitted that the record of the appellant's attendance at the surgery on 21 November 2017 did not address the issue of whether the appellant was unfit to attend court or was unable to instruct his solicitors. There was no evidence that the only way in which the doctor could declare that the appellant was unfit to attend court was by issuing a sick note certifying that he was unfit to work.

Discussion

14. I consider that the Judge gave adequate reasons for refusing to grant an adjournment on the evidence that was available to him and in the light of what was said by Mr Hussein on the resumption of the hearing. The Judge's reasons were in summary as follows:

- (a) The sick note did not address the issue – which was whether the appellant was unable to travel to court to give evidence, even if he was unfit for work;
 - (b) The sick note was issued the day before the hearing, and backdated to five days earlier “*which is difficult to understand*”;
 - (c) There was no explanation for the appellant not giving instructions to his solicitors prior to 16 November, which was the day before when he claimed to have fallen ill;
 - (d) He was not satisfied that the sick note was a true reflection of the appellant’s condition;
 - (e) The Presenting Officer’s submission that the appellant was simply attempting to buy more time was clearly made out, having regard to the appellant’s adverse immigration history, including make a very late claim for asylum only after removal directions were issued against him.
15. The fact that the Judge gave adequate reasons for refusing the adjournment is not determinative of the question of whether the appellant has been the victim of procedural unfairness.
 16. But I do not consider that the disclosure of the GP medical record assists his case. While it shows that he saw a doctor on 21 November 2017 in order to obtain a sick note, it does not show that the doctor made an evaluation that he was unfit to attend court the next day. In fact it is damaging to the appellant’s general credibility for two reasons. Firstly, the doctor records that the appellant kept changing the number of days for which he said he had been sick. Secondly, the doctor records the appellant as saying he was “*feeling better now*”; and that he did not have any blood in his stools and he was not suffering from any fevers. In short, no ongoing symptoms are recorded by the doctor in his notes.
 17. In issuing him with a sick note which was backdated to 17 November 2017, the doctor was giving the appellant a few more days off work by way of recovery from the acute episode which he claimed that he had experienced after eating rice at home on 17 November 2017.
 18. The Judge has been vindicated in his finding that the sick note was not a true reflection of the appellant’s condition at the time of its issue. The appellant was not suffering from diarrhoea and vomiting on 21 November 2017.
 19. In conclusion, the appellant has not persuaded me that the decision to refuse an adjournment was wrong, or that material unfairness resulted from the hearing of his appeal proceeding in his absence.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Direction Regarding Anonymity - rule 14 of the Upper Tribunal Rules 2008

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 20 March 2018

Judge Monson
Deputy Upper Tribunal Judge