



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

Appeal Number: HU/06199/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 8 October 2019**

**Decision & Reasons Promulgated
On 11 October 2019**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

**JSP
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Iqbal, counsel instructed by Connaught Law
For the Respondent: Mr P Singh, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge G Mitchell, promulgated on 11 July 2019. Permission to appeal was granted by First-tier Tribunal Judge G Wilson on 2 September 2019.

Anonymity

2. No such direction was made previously, however owing to the appellant's mental health issues there is reason for one now.

Background

3. The appellant entered the United Kingdom with leave to enter as a Tier 4 migrant on 4 October 2009. Her leave was extended until 31 May 2014. Her leave to remain was curtailed to expire on 17 May 2012. On 30 May 2014, the appellant applied for leave to remain as a Tier 4 migrant. That application was refused with no right of appeal on 13 January 2015. That decision was reconsidered and "voided" because the appellant had also applied for a residence card as the family member of a European Economic Area (EEA) national on 11 October 2015. That application was refused, as were four further EEA applications made between 5 February 2016 and 21 March 2017. On 31 July 2017, the appellant applied for leave to remain as a stateless person, that application being refused on 13 October 2018. Lastly, on 31 December 2018, the appellant made a human rights' claim based on her private life. It is the refusal of this application which is the subject of this appeal. The appellant's claim was based on her mental health problems as well as her claim that her family and friends in India had ostracised her following her failed marriage.
4. The appellant's human rights claim was refused by the Secretary of State by way of a letter dated 11 March 2019. It was not accepted that the appellant could meet any aspect of paragraph 276ADE (1) of the Rules nor that her mental health issues amounted to exceptional circumstances warranting a grant of leave to remain outside the Rules.

The hearing before the First-tier Tribunal

5. The appellant did not attend the hearing before the First-tier Tribunal and nor was she represented. There was an indication that the appellant may have been unwell on the day before the hearing. The judge declined to adjourn the appeal either during the hearing or afterwards when medical evidence sent by the appellant became available. He concluded that the reason for her non-attendance was to cause delay. As to the substance of the appeal, the judge did not accept that Article 8 was engaged and found that even if it was, the decision to remove her would not breach her human rights.

The grounds of appeal

6. The grounds of appeal mainly criticised the judge's failure to adjourn the hearing which took no account of the appellant being a litigant in person. It was argued that the judge's reasoning that the appellant's oral evidence would have no material impact was irrational given that the appellant would have been able to address the judge's adverse findings. The appellant had been deprived of a fair hearing.

7. Permission to appeal was granted on the basis that it was “at least arguable that the appellant should have been afforded an opportunity to respond to (the adverse findings)” and that the failure to do so deprived the appellant of a fair hearing.
8. The respondent did not file a Rule 24 response.

The hearing

9. Mr Iqbal advised me that he had spoken to Mr Singh and that they were agreed that this appeal raised procedural issues rather than those of merit. They were further in agreement that the failure to adjourn the appeal before the First-tier Tribunal judge when documentary evidence appeared to be an error of law and that the matter should be remitted for de novo hearing.
10. Mr Singh agreed that fairness was the main issue. He emphasised that the appellant had produced an A&E discharge summary which supported her claim to have been too unwell to attend the hearing. Furthermore, this was the first adjournment application made by the appellant.

Decision on error of law

11. In advance of the hearing before the First-tier Tribunal, the appellant provided, by email, medical evidence showing that she had been admitted to hospital overnight where she was diagnosed with suspected gastritis. In addition, as she was expressing suicidal ideation, she was referred to the psychiatry team. That evidence was not placed before the judge who proceeded to hear the appeal in the absence of the appellant or a representative. In view of the appellant’s status as a litigant in person, the explanation provided which was supported by medical evidence as well as the negative findings the judge went on to make, the matter ought to have been adjourned out of fairness to the appellant. As Mr Singh pointed out, the appeal had never been adjourned previously. Furthermore, the judge’s comment that the real reason for her non-attendance was to cause delay was unnecessary and unsupported by evidence. The effect of the judge proceeding with the hearing in these circumstances was that the appellant was deprived of the opportunity to address the issues which the judge found were not established, including whether Article 8 was engaged at all. The error in this case is, therefore, manifestly material.
12. While mindful of statement 7 of the Senior President’s Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of her human rights appeal at the First-tier Tribunal and it would be unfair to deprive her of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of three hours by any judge except First-tier Tribunal Judge G Mitchell.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (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 9 October 2019

Upper Tribunal Judge Kamara