



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

Appeal Number: PA/10710/2018

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC  
On 3 May 2019**

**Decision & Reasons  
Promulgated  
On May 16 May 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**L L  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss Butler, Counsel instructed by AB James Solicitors  
For the Respondent: Mr Tan, Senior Home Office Presenting Officer  
Interpreter: Miss Wu

**DECISION AND REASONS**

1. The appellant, a Chinese national, arrived in the United Kingdom on a student visa on May 12, 2008. On February 3, 2010 she applied for further

leave to remain as a Tier 4 dependant, but this application was rejected on May 24, 2010. No further applications were made at that point.

2. On May 14, 2015 she applied for asylum, but this was refused by the respondent. Her appeal went before Judge of the First-tier Tribunal Heynes who dismissed her appeal on August 11, 2016. Permission to appeal was refused on March 20, 2017 by the Upper Tribunal.
3. On June 21, 2017 the appellant lodged further submissions which the respondent accepted as fresh submissions. However, he refused that application on August 20, 2018 and her appeal was subsequently listed before the First-tier Tribunal on October 5, 2018 after the appellant exercised her right of appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.
4. Judge of the First-tier Tribunal McCall refused her appeal in a decision promulgated on October 23, 2018. Permission to appeal was sought and Upper Tribunal Judge Warr granted permission to appeal on March 4, 2019 finding there was an arguable error in law for reasons previously identified by Designated Judge Shaerf. The respondent did file a Rule 24 response dated March 26, 2019 opposing the application.

### **SUBMISSIONS**

5. There were four grounds of appeal argued before me. Ground 2 related to procedural unfairness and to the fact that the appellant's representatives had been unable to obtain the necessary medical evidence in time for the appeal hearing. Two previous requests for the case to be adjourned had been refused by a Tribunal Caseworker and subsequently by a Duty Judge on the day prior to the First-tier Tribunal hearing. The appellant's representatives also failed to submit a bundle to the Tribunal.
6. Miss Butler argued the Judge had erred by failing to adjourn the appeal because the appellant could not have her case properly presented. Mr Tan opposed the application and referred to the previously declined adjournment requests and argued the request for an adjournment was speculative because the doctor's availability was unknown. The appellant had been represented by the same representative for a number of years and there was no excuse for not obtaining the report or providing the relevant statements or evidence.
7. Other grounds were raised by Miss Butler, but for the reasons hereinafter set out, I have not gone into those in any detail.

### **FINDINGS ON THE ERROR IN LAW**

8. Having listened to the submissions presented by both representatives and having looked at the decision of First-tier Judge, I find there has been procedural unfairness.

9. The Judge was placed in an invidious position on the morning of the hearing. Representatives take it upon themselves not to assist the Tribunal or provide documents in the hope that it will lead to an adjournment. The Judge dealt with the matter in a way he felt was appropriate but having read the contents of paragraphs [5] to [11] of his decision, I am satisfied that the importance of fairness was confused with the failures of the appellant's representatives. I am satisfied the appellant had significant medical issues and there had been requests to adjourn the hearing to obtain the necessary medical evidence and/or alternatively the attendance of a doctor.
10. By refusing to adjourn the matter the only loser was the appellant because she was unable to argue a case which placed significant weight on Article 3/8 arguments. The appellant was not personally responsible for this failure and greater weight should have been placed on this issue when considering whether to adjourn.
11. As the medical evidence was crucial to the appeal itself, I find that this case must be remitted back to the First-tier Tribunal.

**NOTICE OF DECISION**

12. There is an error of law and I set aside the original decision aside and I remit the appeal back to the First-tier Tribunal under Section 12(1) of the Tribunals, Courts and Enforcement Act 2007.

**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 her or any member of her 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

14/05/2019



Deputy Upper Tribunal Judge Alis