Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA096792015

THE IMMIGRATION ACTS

Heard at Field House
On 5th May 2016

Decision & Reasons Promulgated
On 9th June 2016

Before

UPPER TRIBUNAL JUDGE COKER

Between

SAJIDBHAI NOORMAHMADBHAI VAHORA

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Cogan, instructed by Marks and Marks Solicitors
For the Respondent: Mr D Clark, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Mr Vahora was granted permission to appeal a decision of FtT judge Norton-Taylor dismissing his appeal against a decision refusing him leave to remain as a dependant based on family and private life grounds. Mr Vahora's appeal was listed for hearing on 17th September 2015. At 9.35am on 17th September 2015 his solicitors faxed a request, dated 16th September

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2015, for an adjournment stating that they had been informed that morning by him that he was "still not fit and well enough to attend court". The adjournment was refused. The grounds seeking permission to appeal assert:

> ...
> 2. … should be set aside as the determination discloses material errors of law.
>
> 3. It is submitted that the decision of the FtT is not in accordance with the caselaw.
>
> 4. The decision of the FtT fails to properly consider the rights of the Applicant.
>
> 5. … should have granted an adjournment based upon the fact that the Appellant's representatives had faxed to the court an adjournment request on 16 September 2015 and 17 September 2015 by fax (please see attached copy and fax transmission report). The learned Judge has refused the adjournment request on the basis that the appellant or his representatives were not present despite the fact that the Judge had received over fax a statement of fitness to work clearly showing that the appellant is not fit to work due to pain.
>
> 6. … the case was listed on 17 September and was on a float list. Due to the fact that the appellant was not in attendance and there was not sufficient time on 17 September 2015 the appeal was looked at on 18 September 2015. No notice had been issued for this date and neither the appellant nor his representatives had been notified of the new date. The hearing should have been adjourned for the sole reason that there was not sufficient time for the court to deal with the matter on 17 September 2015 …

2. Although the grounds seeking permission stated that the copy adjournment requests were attached, they were not but the fax sent on 16th September 2015 at 12.26 and the one sent on 17 September 0935 were in the file.

3. In submissions before me Mr Cogan sought only to rely upon the grounds relating to the refusal of the adjournment and the decision by the FtT judge being taken on 18 September 2015 without notice to the parties. This was a wise decision. The grounds asserting the decision contains material errors of law, was not in accordance with caselaw and failed to properly consider the rights of the appellant were totally unparticularised and did not even begin to identify evidence that had not been considered, what caselaw had not been followed or in what way the appellant's rights had not been considered.

4. Mr Vahora had previously been granted an adjournment of his hearing fixed for 8th September 2015 on the basis of medical treatment. Accompanying the request for the adjournment of the 17th September hearing was a significantly illegible notice. Some of the words were identifiable. In particular the note was headed "Statement of fitness for work for social security or Statutory Sick Pay". A box that seems likely to identify the reason for the Certificate has an illegible word followed by "pain". A box beside the words "you are not fit for work" has an "X" in it. A box headed "Comments including functional effects of your condition" is blank. There is nothing else significant on the form that is legible. Designated Judge Taylor refused the application for an adjournment on 17th September 2015 (see paragraph 2 of the FtT decision).

5. The case, which was on the float list for 17th September 2015 was then, at some time, passed to Judge Norton Taylor. He records, in paragraph 3 of his decision, “The appeal then came before me on 18 September”.

6. Paragraph 28 of the Tribunal Procedure Rules 2014 reads:

> ‘If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal –
> (a) Is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
> (b) Considers that it is in the interests of justice to proceed with the hearing.’

7. Paragraph 9 of the Practice Direction Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal reads, in so far as relevant, as follows:

> ‘9.1 Applications for the adjournment of appeals … listed for hearing before the Tribunal must be made not later than 5.00pm one clear working day before the date of the hearing.
> …
> 9.3 The application for an adjournment must be supported by full reasons …
> 9.4 Any application made later than the end of the period mentioned in paragraph 9.1 must be made to the Tribunal at the hearing and will require the attendance of the party or the representative of the party seeking the adjournment.
> 9.5 It will only be in the most exceptional circumstances that a late application for an adjournment will be considered without the attendance of a party or representative.
> 9.6 Parties must not assume that an application, even if made in accordance with paragraph 9.1, will be successful and they must always check with the Tribunal as to the outcome of the application.
> …
> 9.8 If an adjournment is not granted and the party fails to attend the hearing, the Tribunal may in certain circumstances proceed with the hearing in that party’s absence.’

8. The application for an adjournment was not accompanied by full reasons. There was no indication of any issue affecting the appellant other than some sort of unparticularised pain and that he was not fit for work. That does not mean he was unfit to attend a hearing. The covering letter from the solicitors did not even state what sort of pain the appellant was in. There is no indication that the solicitors or the applicant contacted the Tribunal to establish whether an adjournment had been granted. No reasons were put forward why the application for an adjournment should be considered in the absence of a party or representative (see paragraphs 9.1, 9.3, 9.5 and 9.6 of the Practice Direction).

9. Neither the applicant, nor his wife nor his representative attended on 17th September – see paragraph 9.4 of the Practice Direction.

10. The reliance upon an assertion that the appellant and his representative were not notified of a new hearing date is misconceived. There was no attendance at the scheduled hearing. It is not apparent that the case was not reached on the float list and was therefore passed over to the next day. That neither the appellant nor his representative attended may well have resulted in the case not being called and another case from the float list being heard but that makes no difference to the outcome namely that the appellant and his representative were not present and the appeal was scheduled to be determined. No good or even legible reason had been given for their non-attendance.

11. The fact that the appeal was determined the following day makes no difference – the appellant had an expectation that his appeal would be dealt with on 17th September and he did not attend. It must have been apparent to the appellant and his representatives that if the adjournment request were refused (as it was) then the appeal would be determined in his absence (as it was).

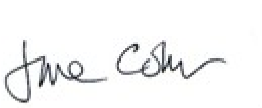
12. In any event the decision was comprehensive and detailed. The judge gave his full attention to the evidence before him which included a 113 page bundle of documents which had been lodged for the earlier adjourned hearing. There was not (and has not been) any indication of any evidence that was not taken into account by the judge or any failure to properly apply the relevant legislation, Immigration Rule or caselaw. There is no error of law, whether material or not. The appellant's claim was hopeless.

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; the decision of the FtT judge stands.

Date 5th May 2016



Upper Tribunal Judge Coker