



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/04723/2018**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On October 8, 2018**

**Decision      &      Reasons  
Promulgated  
On October 17, 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**[C F]  
(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant:      Miss S Pascoe, Counsel, instructed by Indra Sebastian  
Solicitors

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

The appellant entered the United Kingdom as a student on June 26, 2009 with leave to remain until April 30, 2010. Thereafter she was granted leave to remain as a Tier 4 (General) Student until August 23, 2015.

On August 22, 2015 the appellant applied for leave to remain outside of the Immigration Rules but this was rejected with an out of country appeal provided to the appellant.

Further applications were lodged on March 4 and May 24, 2016 but both of these applications were rejected with the latter being rejected without a right of appeal on January 18, 2017.

On March 29, 2017 the appellant made a human rights application but this was refused without a right of appeal by the respondent on August 18, 2017.

On September 25, 2017 the appellant lodged an application for asylum but this was refused by the respondent on March 26, 2018 under paragraph 336 HC 395. The appellant lodged a notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 on April 9, 2018 and her appeal came before Judge of the First-tier Tribunal M A Khan on May 14, 2018 and in a decision promulgated on July 19, 2018 the Judge dismissed her appeal.

The appellant lodged grounds of appeal against this decision on August 1, 2018 and on August 17, 2018 Judge of the First-tier Tribunal Grant-Hutchison gave permission to appeal finding it arguable that the Judge had erred by failing to adjourn for a medical report for which the appellant had already been given an appointment.

The matter came before me on the above date and I took submissions from both representatives.

### **SUBMISSIONS**

Miss Pascoe relied on the grounds of appeal and submitted that they disclosed an error in law. She confirmed, after taking instructions from her instructing solicitor who was in court, that initially there had been a request for a report submitted to an expert in November 2017 but the expert had subsequently advised the solicitors that he was unable to provide the report. Miss Pascoe submitted that her instructing solicitors had then sourced another expert, Dr Lawrence, and he advised on April 6, 2018 that he could prepare a report but that such a report would not be provided to the Tribunal until June 2018 as he would be unable to see the appellant until May 24, 2018. She submitted that the solicitors had applied due diligence and that it was unfair and against the interests of justice not to adjourn the appeal.

Mr Tarlow objected to the application and submitted that there had been ample time for a report to have been prepared and there had been ample time to make alternative arrangements when the original expert had stated he could not provide a report. The Judge had been within his remit to refuse the adjournment.

### **FINDINGS**

The challenge to the Judge's decision was a narrow challenge and centred on his refusal to adjourn the case for a report. It is important when considering adjournment requests to have regard to not only the 2014 Procedure Rules but also the guidance given in the case of Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC). The Upper Tribunal made it clear that when considering and adjournment request consideration had to be given as to whether a refusal

would deprive the affected party of his or her right to a fair hearing. The key issue is therefore fairness and if an adjournment refusal is unfair this could amount to an error in law. The Presidential Guidance Note No 1 of 2014 made it clear that applications to adjourn immigration appeals should be considered on their own merits and all factors brought to the Tribunal's attention must be examined.

What became clear from the submissions presented by the representatives was that the failure to provide a medical report was not the appellant's fault. I had some concerns over the conduct of the appellant's representatives as no satisfactory timeline or evidence of them chasing up a report had been submitted to the Tribunal. I pointed out to Mr Tarlow that in circumstances where the fault lay more at the representatives' door rather than the appellant's it would be hard to find that the appellant had been given a fair hearing.

On reflection, Mr Tarlow accepted that putting the case as I had presented it to him he accepted it would be difficult to argue that the appellant had had a fair hearing. This was a case where the representatives were aware there were mental health issues and steps had been taken to obtain a report although it is arguable they did insufficient to chase the matter up. The appellant cannot be blamed for this and in such circumstances I concluded that there had been an error in law.

Having identified there had been an error in law I raised with the representatives where this case should best be concluded and the conclusion was that this case should be remitted back to the First-tier Tribunal under Section 12(1) of the Tribunals, Courts and Enforcement Act 2007.

I issued directions that a Sinhalese interpreter should be provided if one was needed. I noted there was a report from Dr Lawrence dated June 9, 2018 already on file and Miss Pascoe confirmed that the case was ready for a rehearing. She also indicated that in light of the content of the medical report the appellant was unlikely to give oral evidence.

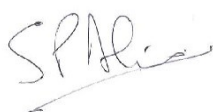
### **DECISION**

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

No anonymity direction is made.

Signed

Date 10/10/2018



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 10/10/2018

A handwritten signature in black ink, appearing to read "SPAL" with a flourish underneath.

Deputy Upper Tribunal Judge Alis