Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/01124/2015**

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke	**Decision & Reasons**
On 14 October 2015	**Promulgated**
	On 16 October 2015

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

NB
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None
For the Respondent: Ms Johnstone, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. This appeal is anonymised because it refers to medical evidence relating to the appellant and her husband.

2. In a decision dated 15 April 2015 First-tier Tribunal Judge I. F. Taylor heard the appellant's appeal in her absence and declined to adjourn it. Judge Taylor dismissed the appellant's appeal against a decision dated 11 December 2014 to refuse to grant her leave to remain on the basis of her marriage with her husband and her private life in the UK.

3. Judge Taylor set out what happened on the day of the hearing in his decision [2]. The appellant appeared before me and has clarified events slightly. She said that she attended the Tribunal with her husband but the court building was locked and she returned home (a few miles from the relevant court building) as she did not know what else to do and her husband became short of breath. She said that she rang the relevant number at the Stoke hearing centre and indicated she could not return to the Tribunal because her husband was unwell.

4. I must decide whether, in proceeding in the appellant's absence and not adjourning the hearing, the Tribunal acted unfairly in all the circumstances, not whether it acted reasonably – see Nwaigwe (adjournment: fairness) [2014] UKUT 418 (IAC).

5. The appellant relied upon the very helpful grounds of appeal prepared by Mrs Sood of Counsel. These submit that the Tribunal failed to get back to the appellant to explain what she should do next and that the hearing could not be justly determined in the appellant's absence as it was necessary for the appellant to update the Tribunal on her health needs and those of her husband.

6. I am satisfied that the First-tier Tribunal was entitled to and acted fairly in proceeding with the appeal in the absence of the appellant. Rule 28 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 permits the Tribunal to proceed in a party's absence if it is satisfied that (a) the party was notified of the hearing and (b) it considers that it is in the interests of justice to proceed with the hearing. The appellant accepts that she was notified of the hearing. The judge considered the overriding objective and decided to proceed with the hearing.

7. I am satisfied that it was in the interests of justice to proceed with the hearing. As the judge noted the appellant made no effort to provide any specified evidence regarding her husband's illness to the Tribunal or the judge. Had the illness been sufficiently serious to prevent the appellant from attending such an important hearing there would have been medical evidence available to support this or at least a

more detailed explanation beyond being unwell and / or short of breath. The appellant did not provide the Tribunal with any such evidence. When granting permission to appeal Deputy Upper Tribunal Judge Davey stated as follows:

> "At the hearing of the appeal [before the Upper Tribunal] the Appellant will be expected to provide evidence of why her husband's health had deteriorated between her leaving home for the hearing and her return. Similarly, medical evidence of why her presence was required so that she could not attend the hearing later that day."

8. At the hearing before me the appellant attended together with her husband. I asked her if she had brought with her any medical evidence to support her claim regarding her husband's illness on the day of the hearing before the First-tier Tribunal, following the above direction. She said that apart from obtaining new inhalers for him that day she had not sought or brought with her any such evidence. The appellant has failed to evidence the mere assertion that her husband was so ill that she could not attend a hearing for any part of 1 April 2015. Absent such evidence the judge was entitled to consider that there was no good reason for the appellant's absence. The judge was entitled to take into account the needs of other court users and the delay that would be caused if an adjournment was granted.

9. This is a case in which the appellant relied upon there being insurmountable obstacles to her husband returning to Jamaica to live with her. There was very limited evidence available to the judge as to the extent of the husband's incapacity and his need to be in the UK as a result of his illnesses [14]. The appellant confirmed that the only evidence available was and remains a GP letter from 2014. This states that the husband suffers from a number of medical conditions and sets out his medication. It is then said that he is looked after by his wife and she "*has raised concerns regarding his welfare as she says he has become very forgetful and doesn't remember that he has had his meals when she asks him*". No further details are provided. The appellant did not provide any clear and cogent evidence that her husband could not be cared for in Jamaica, a country in which he had spent his formative years. In these circumstances, the submission that the appeal could not be justly disposed of in the absence of the appellant is difficult to follow. When she appeared before me the appellant confirmed that the only medical evidence regarding her husband remained in the form of the 2014 GP letter.

10. I am satisfied that the judge was entitled to proceed with the hearing in the absence of the appellant, in light of the

information available and the issues in for determination. The relevant facts were already before the Tribunal, and there was very little to add beyond this evidence.

11. The grounds of appeal also submit that the judge failed to take into account section 117B of the Nationality, Immigration and Asylum Act 2002 (as amended). As pointed out in AM (S 117B) Malawi [2015] UKUT 0260 (IAC) an applicant can obtain no positive right to remain from sections 117B (2) or (3), whatever the degree of her fluency in English or the strength of her financial resources, particularly where as in this case the judge was obliged to place limited weight on the relationship and the appellant's private life, which were established when she was in the UK as an overstayer. Any error in failing to address section 117B is not material because the Tribunal would have come to the same decision under Article 8 of the ECHR.

12. The decision of the First-tier Tribunal did not involve the making of a material error of law and is not set aside.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
15 October 2015