



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

Appeal Number: EA/02352/2016

EA/02354/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 21 February 2019**

**Decision & Reasons Promulgated
On 27 February 2019**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

NIGER SULTANA

Md NEYAMAT ULLAH

(anonymity direction not made)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr. A. Alam of counsel, instructed by Hamlet Solicitors LLP

For the Respondent:

Ms J. Isherwood, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The 1st Appellant is a national of Bangladesh. She entered the United Kingdom, as a student, on 15 September 2009 and her leave to remain was extended on the same basis in 2012 and 2013. When applying for these periods of leave, the 1st Appellant satisfied the Respondent that she had sufficient funds to pay for her course fees and support herself and any dependent.
2. The 1st Appellant married the 2nd Appellant in Luton on 4 August 2012 and on 25 August 2015 the 1st Appellant applied for a residence card. as the extended family member of her uncle, Murshed Ahmed. He is an Italian national, who had arrived in the United Kingdom in 2014. The 2nd Appellant was a dependent to her application. On 8 February 2016, the Respondent refused the 1st Appellant's application.
3. The Appellants appealed but First-tier Tribunal Judge Saffer dismissed their appeal in a decision promulgated on 15 June 2017 on the basis that the First-tier Tribunal did not have the jurisdiction to hear appeals by those relying on their rights as extended family members of EEA nationals. Permission to appeal against this decision was granted by First-tier Tribunal Judge Chamberlain on 23 November 2017 in the light of the decision in *Khan v Secretary of State for the Home Department* [2017] EWCA Civ 1755. In a decision, promulgated on 26 March 2018, the appeal was remitted to the First-tier Tribunal by Deputy Upper Tribunal Judge Murray.
4. The appeal was then listed before First-tier Tribunal Judge Griffith and she refused their application for an adjournment and dismissed their appeal in a decision promulgated on 25 October 2018. First-tier Tribunal Judge Grimmett refused the Appellants permission to appeal on 15 November 2018 but on 17 January 2019 Deputy Upper Tribunal Judge Taylor did grant them permission to appeal. This was on the basis that it was arguable that the Appellants were prejudiced the decision to refuse them an adjournment.

ERROR OF LAW HEARING

5. Both counsel for the Appellant and the Home Office Presenting Officer made oral submissions and I have referred to the content of these submissions, where relevant, in my decision below.

ERROR OF LAW DECISION

6. Regulation 8 of the Immigration (European Economic Area) Regulations 2006 (“the 2006 Regulations”) is headed ‘*Extended Family Member*’ and states that:

“(1) In these Regulations ‘extended family member’ means a person who is not a family member of an EEA National...and who satisfies a condition in paragraph (2), (3), (4) or (5).

(2) A person satisfies the condition in this paragraph if the person is a relative of an EEA national...and

(a) the person is residing in a country other than the United Kingdom...and is dependent upon the EEA national or is a member of his household;

(b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the United Kingdom or wishes to join him there...”

7. In paragraph 22 of his decision, First-tier Tribunal Judge Parkes accepted that the 1st Appellant was related to her uncle as claimed. There was also a copy of her uncle’s Italian passport in the Appellants Bundle.

8. At the hearing before First-tier Tribunal Judge Griffith, there was no Home Office Presenting Officer present and the Appellants had not previously been served with a copy of the Respondent’s Bundle. Therefore, the Appellants’ legal representative applied for an adjournment. First-tier Tribunal Judge Griffith refused to grant an adjournment but provided the Appellants’ legal representative with a copy of the Respondent’s Bundle and put the case back in the list. The hearing started at 3.20 p.m. and lasted until 3.55 p.m.

9. In the grounds of appeal, the Appellants submitted that the decision to refuse them an adjournment was unlawful and procedurally improper. They relied on *Nwaigwe (adjournment: fairness)* [2014] UKUT 00418 (IAC) where the Upper Tribunal found that:

“If a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a

fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing? See SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284".

10. In *Nwaigwe*, the Upper Tribunal also found that "as a general rule, good reason will have to be demonstrated in order to secure an adjournment".
11. Rule 4(3)(h) of The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 ("the Procedure Rules") provides a First-tier Tribunal Judge with a discretionary power to grant a party an adjournment but does not specify the basis on which such an adjournment should be granted. Instead, the First-tier Tribunal Judge is required to take into account the overriding objectives contained in Rule 2 of the Procedure Rules. Rule 2(2) refers to the need to deal with cases fairly and justly. This includes "ensuring, so far as practicable, that the parties are able to fully participate in the proceedings" and "avoiding delay, so far as compatible with proper consideration of the issues"
12. First-tier Tribunal Judge Griffith did not explicitly refer to the Procedure Rules, but this was not necessarily a procedural breach if she reminded herself that she had a discretionary power to adjourn and applied the overriding objectives. In paragraph 12 of her decision, First-tier Tribunal Judge Griffith noted that an application for an adjournment was made and refused. She did not elaborate on her reasons in her record of proceedings but did indicate that the Appellants' case was put back to the end of the list and was not heard until 3.20 in the afternoon. However, at the hearing before me counsel for the Appellants provided me with a copy of the attendance note written by the Appellants' legal representative at the hearing before First-tier Tribunal Judge Griffith.
13. This note confirmed that the Judge had been informed that the Appellants had not received a copy of the Respondent's bundle and that the sponsor was not present. It also confirmed that the Judge gave the Appellants' legal representative a copy of the Respondent's Bundle and that the legal representative did not raise any issues in relation to the content of the Bundle.

As the case was put back in the list, the legal representative would have had sufficient time to read the short bundle and take any instructions on its contents from the Appellants who were present at the hearing. The legal representative's note also indicated that he did not raise any issues about the documents in the Respondent's Bundle. The Bundle itself only contained their initial application with supporting evidence, their grounds of appeal and previous decisions which had been sent to them. The contents of the Bundle were also referred to in the refusal letter.

14. Therefore, the fact that the Appellants did not initially have access to the Respondent's Bundle cannot be said to have given rise to any unfairness as First-tier Tribunal Judge Griffith provided them with a copy of the Bundle and gave their legal representative time to take any necessary instructions. In addition, there was a copy of the very detailed grounds of appeal against the decision to refuse to grant them residence cards in the file. This indicated that the Appellants, though their legal representatives, already understood the case being made against them by the Respondent.
15. The sponsor was not present at the hearing and the Appellants had explained to the Judge that his child was ill. No medical evidence to confirm that this was the case was provided at the hearing or at any time since the hearing. His absence could only have given rise to unfairness if this meant that evidence essential to the Appellants' case was not before the Tribunal. The sponsor had already provided a short witness statement and there was no evidence which indicated that he intended to provide any further evidence at the hearing, which would have made a material impact on the outcome of their appeal. The disclosure of the attendance note also revealed that the Appellants had applied for an adjournment at some point prior to the appeal hearing but this application had been refused by a Duty Judge. Therefore, there was no reasonable basis for asserting that the sponsor believed that the hearing would not proceed because the Appellants did not have a copy of the Respondent's Bundle.
16. In addition, the Appellants did not assert that the sponsor had other documentary evidence, which he was bringing to the appeal hearing, and on which they wished to rely. The record of proceedings also indicates that there was no question which the 1st Appellant was not able to answer without her uncle being present.

17. In these circumstances, there was no basis on which it was “unfair” or procedurally improper to continue with the hearing in his absence.
18. The grounds of appeal also assert that the First-tier Tribunal Judge erred in law because the sponsor was not present for a legitimate reason. As stated above, there was no medical evidence to confirm the reason for his absence. But, more importantly, the Appellants did not particularise any material detriment to their appeal arising from his absence. Therefore, I find that First-tier Tribunal Judge Griffith did not err in law when she refused to grant an adjournment.
19. The Appellants have not sought to adduce any further documentary evidence under rules 15 (2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and their grounds of appeal do not challenge the substantive decision reached by First-tier Tribunal Judge Griffith.
20. In relation to the substantive decision, I note that the 1st Appellant asserted that before she came to the United Kingdom as a student, her sponsor sent her money on a regular basis. The only evidence that this was the case was a statement for the savings account held by the 1st Appellant at the Janata Bank Limited for the period from the 1st March to 30 August 2009. This confirmed that her uncle had made six monthly cash deposits into her account of Tk 15,000 for the six months immediately prior to her commencing her studies in the United Kingdom.
21. In paragraph 7 of his witness statement, dated 8 October 2018, her sponsor went no further than to assert that she had been financially dependent upon him since she was in Bangladesh and that he had provided her with money from time to time. He also asserted that after he came to the United Kingdom the 1st Appellant came to live with him and he gave her money, as required. In her letter of application, dated 28 August 2015, the 1st Applicant said that sometimes he gave her cash and sometimes he paid money into her Santander account. However, there was only one statement from this account and this was for the period 8 July to 7 August 2015 and showed one credit to her account by her uncle for £100 and one for £90 and all but £10 of this money was withdrawn in cash within a matter of one or two days. There was also a cash account statement for a Lloyds Bank account held by the 1st Appellant’s uncle, which showed that he had sent her £80 on 12 August 2015,

22. Furthermore, in paragraph 8 of her witness statement, the 1st Appellant disclosed that her uncle was still living in Italy when she came to the United Kingdom as a student and, in his statement, he said that he only moved to the United Kingdom at the end of 2014. There was also no evidence to confirm when her uncle, who was born in Bangladesh, became an Italian citizen. The copy of his passport indicated that it had only been issued to him on 17 September 2014 and there was no other evidence to show that he had been an EEA national prior to that date.
23. In all the circumstances I find that First-tier Tribunal Judge Griffith did not err in law when she refused to grant the Appellants an adjournment and went on to dismiss their appeals.

DECISION

- (1) The Appellants' appeal is dismissed.
- (2) The decision by First-tier Tribunal Judge Griffith stands.

Nadine Finch

Signed
Upper Tribunal Judge Finch

Date 22 February 2019