Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11530/2018**

THE IMMIGRATION ACTS

Heard at:	**Field House, London**	**Decision & Reasons Promulgated**
On:	**18 January 2019**	**On: 30 January 2019**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

MR MOHAMMED BELAL UDDIN
(ANONYMITY NOT DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Mr J Plowright	(Counsel)
For the Respondent:	Mr T Lindsay	(Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the First-tier Tribunal, from a decision of the First-tier Tribunal ("the tribunal") which it made on 31 October 2018; whereupon it dismissed the claimant's appeal from the Secretary of State's decision of 17 September 2018 refusing to grant him international protection.

2. I have not made an anonymity direction in this case. The tribunal did not do so, I was not urged to do so, and I could think of any good reason to do so.

3. Shorn of all but essential detail, the background circumstances are as follows: The claimant is a national of Bangladesh and he was born on 12 November 1992. He entered the United Kingdom ("UK") on 18 February 2015. On 16 March 2018 he claimed asylum. As to the claimed circumstances underpinning that claim, he asserted that due to previous activity for a student oppositionist group he would be persecuted, upon return, by the members of the ruling political party in Bangladesh, the Awami League. The Secretary of State, however, did not think the claimant had given a truthful or accurate account of events in Bangladesh and concluded that, accordingly, he was not a refugee and could, therefore, safely return or be returned to Bangladesh.

4. The appeal came before the tribunal on 30 October 2018. The claimant, although he had had some legal representation in the past, was unrepresented before the tribunal. The Secretary of State was represented by a Home Office Presenting Officer. It is necessary to say something about how the claimant came to be unrepresented at that stage.

5. The relevant history of adjournment requests prior to the hearing before the tribunal is set out in some detail in the tribunal's written reasons of 31 October 2018. I have in mind, in particular, what is said from paragraphs 8 to 12 of those written reasons. But put simply and briefly, there had been a papers based pre-hearing review on 16 October 2018. At that point the tribunal directed the claimant to provide a witness statement and a paginated bundle of documents he proposed to rely upon. On 25 October 2018 the tribunal received a letter from the claimant seeking a three month adjournment of the proceedings so that he could obtain documentary evidence from Bangladesh. The application, as I think is normal practice these days, was considered not by a Tribunal Judge but by a "designated caseworker" who refused it on the basis that no explanation had been given as to the potential relevance of the document and that there had, in any event, been plenty of time to obtain them in the past. On 26 October 2018 the tribunal received a letter from the claimant's solicitors seeking an adjournment on the basis that the claimant was unwell and would not be fit to attend the hearing. The application was supported by a letter written by the claimant's general practitioner. That letter was dated 25 October 2018. It made reference to the claimant having been suffering from a variety of symptoms over the previous two month period including generalised aches and pains and urinary frequency. The GP also said that she had "strongly advised" the claimant to self-refer to local mental health services. The letter did not directly address the question of whether the claimant might or might not be fit to attend a hearing. That application was refused by the tribunal because of the absence of an indication in the GP's letter as to unfitness. The upshot was that the claimant, as already stated, attended unrepresented. The tribunal noted that he had explained to it that he had been unable to fund representation and due to his health difficulties "had been unable to see his solicitor".

6. It is clear that the claimant renewed his application for an adjournment in person. The tribunal said this about that renewed application:

> "12. … the appellant renewed his application for an adjournment saying he needed more time to obtain documents from Bangladesh, raise funds in order to pay for

representation and because he was not feeling well. The respondent opposed the application to adjourn pointing out that the appellant had already had plenty of time to obtain documents from Bangladesh, his ability to fund legal representation was unlikely to change and that there were no good reasons for not proceeding with the appeal immediately. Enquiries were made of the appellant's solicitors and in response at 10:53 am a letter was faxed to the tribunal in which they stated that, on account of the appellant's illness and non-service of the respondent bundle they had not been able to prepare an appellant's bundle. They also stated that they had no confirmed instructions regarding representation at the hearing and so would not be attending."

And then, with respect to its decision on the adjournment request, the tribunal said this:

"13. In resolving the appellant's application for an adjournment I considered the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I paid particular regard to rule 2 and the tribunal's overriding objective of dealing with cases fairly and justly including rule 2(2)(e): avoiding delays so far as compatible with proper consideration of the issues. I also applied the principles set out in: Nwaigwe (Adjournment: fairness) (2014) UKUT 00418 (IAC) in particular that the central issue was fairness and ensuring that both parties receive a fair hearing.

14. The appellant's request for an adjournment had three bases (i) to obtain documents from Bangladesh, (ii) the appellant's ill health, (iii) to be legally represented. The first two bases had already been considered prior to the hearing and refused. For the reasons which had been expressed in refusing those applications I also considered that an adjournment was not in the interests of justice and would not assist in ensuring a fair hearing. The appellant still could not identify the specific documents in Bangladesh which he was seeking, he made his asylum claim in March 2018 and so had already had seven months in order to obtain the documents and had in fact already obtained a number of documents in support of his claim. The appellant's ill health was not so serious that it prevented him from attending the hearing. The symptoms described in the GPs letter are the same as those the appellant complained of in his screening interview in March 2008 namely, headaches and back pain and so I considered that there was no likelihood of the situation improving within a reasonable time in the future. I also considered that the appellant's headache would not prevent him from fully participating in the hearing especially since the tribunal is informal and flexible and the appellant could be given time to ensure he could fully participate. In relation to the third basis of the application the appellant's solicitors had not attended stating they did not have confirmed instructions on whether they should attend from the appellant. The appellant himself said he could not afford representation due to his dire financial situation. In these circumstances I determined that an adjournment would not serve any purpose as the position in the future would be exactly the same as it was on the day of the hearing. Finally I took into account the fact that the respondent's bundle had been properly served in accordance with the tribunal's directions and that it included a witness statement from the appellant plus the documents he submitted in support of his claim. I was satisfied therefore that the information relevant to the claim was before me. In all the circumstances I found that dealing with the appellant's case fairly and justly meant proceeding with the appeal and accordingly I refused his application to adjourn. I made it clear to the appellant

> that he would be assisted in presenting his case and that he would be given as much time as he needed on the day to ensure he could do so effectively."

7. The tribunal then went on to conduct its own assessment of the claimant's account of events and to comprehensively disbelieve him. So, it dismissed his appeal.

8. That was not the end of the matter because the claimant, who had once again been able to obtain representation on the basis, I am told, of funds given to him by friends, sought permission to appeal to the Upper Tribunal. The written grounds are surprisingly extensive, running to 10 pages, despite the fact that they only challenge the way in which the tribunal dealt with the adjournment request. They make reference to the quite well known decision of the Upper Tribunal in *Nwaigwe (Adjournment: Fairness)* [2014] UKUT 00418 (IAC) and to an old version of the First-tier Tribunals Rules of Procedure. Permission to appeal was granted and the granting Judge relevantly said this:

> "It is arguable that the refusal of the application to adjourn deprived the appellant of a fair hearing (*Nwaigwe (Adjournment: Fairness)* [2014] UKUT 00418 (IAC)). The grounds raise arguable errors of law. Permission to appeal is granted on all grounds."

9. Permission having been granted the case was listed for a hearing before the Upper Tribunal (before me) so that it could be decided whether the tribunal had erred in law and, if it had, what should flow from that. Representation at that hearing was as stated above and I am grateful to both representatives for their clear and straightforward approach.

10. Mr Plowright did not attempt to take me through all of the grounds. Instead he sensibly and appropriately focused upon what was likely to be relevant. He argued that in refusing the adjournment request the tribunal had focused too much upon avoiding delays in the proceedings (see paragraph 13 of its written reasons) rather than on fairness. Whilst it had said, in the same paragraph, that "the central issue was fairness" that really only amounted to its paying "lip-service" to fairness. Whilst the GP's letter had been quite non-specific it did demonstrate ongoing concerns and the tribunal had not fully taken its content into account. The fact that the claimant had turned up for the hearing should not be held against him in the context of the claimed health issues, because it was understandable that an asylum seeker, even if not fit to attend, might make determined efforts. It was not entirely clear whether the lack of funds was the cause of the failure to submit an appellant's bundle of documents but, in any event, the lack of written preparation was concerning. As to the lack of funds in order to pay for representation, the tribunal should have enquired of the claimant as to what the position was or might be in the future. Public funding is difficult to secure. Although this was not "an outrageous refusal" to adjourn it had in the circumstances, been an unfair one.

11. Mr Lindsay, for the Secretary of State, confirmed that the claimant's appeal was resisted. The tribunal had no reason to think, notwithstanding the subsequent ability of the claimant to pay for representation in seeking to challenge the tribunal's decision, that the claimant would have been able to fund representation had it adjourned and reconvened on a later date. It was for the claimant to satisfy the tribunal that there would be a prospect of securing funds and therefore being represented in future. Whatever view one might take with hindsight the tribunal cannot be criticised for failing to predict the

future. The tribunal had clearly reminded itself of the importance of fairness in deciding whether to adjourn. As to delay in the proceedings it had been entitled, perhaps obliged, to take that into account as a result of the overriding objective as contained in rule 2 of its Rules of Procedure. As to unfitness, there was no clear evidence that the claimant was unfit to attend a hearing.

12. In light of what had been said about the funding issue I read to the representatives this passage from the tribunal's Record of Proceedings:

> "I ask for the adjournment I have asked friends to help me with money and in the future I will arrange a barrister to represent me."

13. That is clearly a record of what the claimant had said to the tribunal in support of that aspect of his adjournment request. Neither representative had anything of real significance to add to what they had already said but Mr Plowright did argue that that passage afforded his argument some support in that it showed the claimant had raised with the tribunal the fact that he might be able to obtain future funds and, therefore, might be represented at a reconvened hearing if there was to be one.

14. I reserved my decision as to error of law and afforded myself time to consider matters. Having done that I have decided that the grounds, as clarified and amplified during the course of the hearing before me, do not show that the tribunal erred in law. I shall now explain why I have reached that view.

15. The claimant had asked for a postponement and then an adjournment in part because he wanted to obtain further documentary evidence from Bangladesh. But I cannot find, in the material in front of me, any indication as to what those document are or how they might be of relevance. It is clear that that information had not been given to the tribunal either. It was for the claimant to demonstrate that fairness demanded that he be given an adjournment. It was simply not possible for the tribunal to consider that it did, on the basis of the documents, without any meaningful information as to the content and potential relevance of them.

16. As to the health concerns, I do not accept the contention made to me at the hearing that the tribunal had not fully considered the GP's letter or had fully not taken it into account. The letter is a relatively brief document. What the tribunal had to say about it at paragraph 11 demonstrates that it had read it and had considered it. It referred specifically to the reference to his suffering from different symptoms including general aches and pains and problems with his urine. It may be that in making that point Mr Plowright had in mind the failure of the tribunal to refer to the mental health concerns which had been mentioned. I do appreciate that mental health difficulties of a certain severity are capable of impacting upon a person's ability to give reliable evidence or to properly represent themselves if called upon to do so. But I do not think the failure to specifically mention mental health means that the matter was overlooked by the tribunal. Its central point as to health was that the evidence did not support the proposition that the problems were such as to prevent him from attending a hearing. It was entitled to so conclude. Further, whilst I accept Mr Plowright's commonsense argument that even a very ill claimant might attend if there was no other option, there is nothing in the tribunal's

written reasons which suggests that it decided he was fit to attend simply because he had, as a matter of fact, attended. Rather, what it was doing was assessing the written medical evidence and what that did or did not tell it.

17. As to the funding issue, I raised at the hearing the possibility that the claimant might have been able to secure public funding. Mr Plowright argued that that may have been a matter which the tribunal was required to enquire into prior to refusing to adjourn. I see why he makes that point but, in my judgment, the tribunal did not have to raise the issue with the claimant itself. It was reasonable for it to have assumed that any such possible entitlement would have been considered at some point in the past. In any event there was no suggestion made to it that the claimant did want an adjournment expressly to apply for public funding.

18. I was concerned about the possibility notwithstanding the primacy with which it had said it was attaching to fairness, the tribunal might have failed to properly consider, address and factor into its adjournment decision, the possibility of the claimant obtaining funds to instruct a representative in time for any reconvened hearing which there might have been resulting from any adjournment. My primary concern as to that was that the tribunal, on the face of what it had said in its written reasons, might have simply assumed for itself that there was no prospect of the claimant's financial position changing for the better so as to enable him to re-secure representation, without enquiring as to that possibility of him. But it is clear from what I have set out from its Record of Proceedings that the claimant did, in fact, give some information to the tribunal about his finances. So it cannot be said that the tribunal simply assumed what the position might be without hearing anything from him. In my judgment, it was open to the tribunal on the material before it and for the reasons it gave, to conclude that there was not a realistic prospect (notwithstanding what has subsequently happened) that the claimant would be able to fund representation in the future. Having reached that view there was no longer any sensible basis for it to adjourn in the hope that representation might be secured in the future.

19. I do not agree that the tribunal focused too much on "delay". It did say that its primary concern was fairness and I see nothing in its reasoning to suggest that, having identified that as the key issue as indeed it had to do following *Nwaigwe*, it lost sight of that. There were a number of points which had been made in the written grounds which Mr Plowright did not pursue though he did not withdraw them. But in the circumstances, and given that Mr Plowright rightly focused upon what he rightly thought was most relevant, I can be relatively brief about those other points. In fact, I am not sure that I wholly understand the very first point which is made under the heading "grounds" but what is said does appear to rely upon a form of rule 21(2) of the First-tier Tribunal's Rules of Procedure which is no longer in existence and was not in existence at the time the tribunal heard the appeal. The tribunal did, contrary to an implied suggestion in the grounds, and as I have already said, attach primacy to fairness. It was clearly aware that there would be potential prejudice to the claimant if an adjournment was not granted and that is why it gave such careful consideration to the issue. It was not required to perform what is described as "an interrogation" of the letter which had been written by the GP. It certainly had to consider and take its contents into account. But it did that. Anything else

said in the grounds which I have not expressly referred to above does not go beyond re-argument with the tribunal's clearly reasoned decision not to adjourn.

20. Having decided not to adjourn the tribunal went on to give careful consideration to the case which the claimant had presented to it. It made a number of clear, cogent and persuasive findings with respect to the claimant's credibility and with respect to the plausibility of what was being said. In my judgment, on the material and on the basis of the arguments before it, its analysis was faultless. It can always be said, of course, that representation might make a difference. In general I would certainly accept the truth of that proposition. But here not only is it the case that the points made by the tribunal regarding the claimant's veracity and the plausibility of his account were particularly cogent and persuasive, but nothing has been said with any precision as to what other arguments might have been canvassed and what other evidence might have been presented which would have been capable of making a difference to the outcome.

21. In the circumstances, therefore, I have concluded as my primary conclusion that the tribunal did not err in law in refusing to adjourn or in its explanation as to the reasons why it was refusing to adjourn. But even if I am wrong about that I would conclude that it has not been demonstrated that, even if the tribunal had erred in that regard, that in the particular circumstances of this case any such error could have impacted upon the outcome.

22. In the circumstances the claimant's appeal to the Upper Tribunal fails.

Decision

The decision of the First-tier Tribunal did not involve the making of an error of law. Accordingly, that decision shall stand.

No anonymity direction is made.

Signed: Dated: 28 January 2019
Upper Tribunal Judge Hemingway