



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/09922/2015**

**Appeal Number:**

**H**

**U/09923/2015**

**HU/09924/2015**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**Promulgated**

**On 25 October 2017**

**On 25 October 2017**

**Before**

**UPPER TRIBUNAL JUDGE SOUTHERN**

**Between**

**ANITA DAMMARPAL THAPA  
SURYA BAHADUR THAPA  
KAMALA DAMMAR PAL THAPA**

Appellant

**and**

**ENTRY CLEARANCE OFFICER (New Delhi)**

Respondent

**Representation:**

For the Appellants: Mr R. Jesurum, of Counsel

For the Respondent: Ms Z. Ahmad, Senior Home Office Presenting Officer

**DECISION**

1. In a brief and wholly inadequate determination of this appeal, First-tier Tribunal Judge Majid said:

“There was No Show and I had to deal with the case on that basis.

I have dismissed the appeal due to lack of interest.”

2. That, of course, was no basis upon which to dismiss the appeal. This was an appeal against refusal to grant entry clearance and so, obviously, the appellants themselves could not attend. Unknown to the judge, because

it appears that nobody had told him, the Tribunal had received a number of communications explaining why, unexpectedly, no representative would be attending. Counsel who had been instructed had been taken ill overnight. His clerk sent a fax to the Tribunal at 9.17 explaining that counsel could not attend. The appellants' solicitors then sent, at 9.27, a fax requesting an adjournment. Having received no response, they made 3 telephone calls to the Tribunal. Therefore, the Tribunal was well aware that there was no lack of interest in pursuing this appeal and that an adjournment had been sought.

3. It seems clear that none of this was communicated to Judge Majid. That is sufficient to establish that there has been procedural unfairness such as to amount to an error of law and for that reason alone, as was readily, and properly, conceded by Ms Ahmad, the decision of the judge cannot stand.
4. Although Judge Majid cannot be held responsible for the fact that he was not informed of the reasons for counsel's absence, I accept Mr Jesurum's submission that it was, in any event, an error of law for the judge to fail to engage with the material before him and to dismiss the appeal simply upon the basis that the appellants were unrepresented and no one had appeared to give support for the appeal.
5. It was common ground between the parties that the only proper outcome is to remit this appeal to the First-tier Tribunal so that the appellants may have the hearing of their case to which they are entitled.

Summary of decision:

6. First-tier Tribunal Judge Majid made errors of law material to the outcome of this appeal and his decision to allow the appeal is set aside.
7. The appeal to the Upper Tribunal is allowed to the extent that the appeal is remitted to the First-tier Tribunal to be determined afresh by a judge other than Judge Majid.

Signed



Upper Tribunal Judge Southern  
October 2017

Date: 25