



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/33545/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 26th March 2018

**Decision & Reasons
Promulgated
On 11th April 2018**

Before

UPPER TRIBUNAL JUDGE CHALKLEY

Between

**VICTOR SALVADOR GUALLICHICO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not represented

For the Respondent: Ms Alex Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Ecuador, born on 12th March 1954. He appealed against the decision of the respondent taken on 13th October 2015, in refusing his application for leave to remain in the United Kingdom on Article 8 grounds.
2. The appellant lodged his appeal with the First Tier Tribunal on 26th October 2015, and requested that it be decided at an oral hearing. The appeal was heard at Harmondsworth on 8th November 2016, by First-tier Tribunal Judge Kainth. The appellant did not attend the hearing before the judge. The judge was satisfied that the appellant was provided with a notice

giving a date, time and place fixed for the hearing of the appeal by the Tribunal. The judge confirmed that the address to which the notice was sent, was the same address as appeared on his appeal documentation and that the appellant had aware of the hearing for some five months. He proceeded to hear the appeal in the absence of the appellant and dismissed it, finding the appellant's removal from the United Kingdom to be proportionate. Indeed, given the weight the judge was required to give to the interests of the wider public in the maintenance of immigration control, it is difficult to envisage any judge arriving at a different conclusion.

3. The appellant challenged that decision and First-tier Tribunal Judge P J M Hollingworth thought that it was properly arguable that the decision to proceed with the hearing in the appellant's absence was not based on the "*complete matrix of factors*" through no fault of the judge and in the light of the "*complete matrix of factors*" the proceedings were unfair. It was claimed in the grounds that the appellant's Notice of Hearing had been sent to the wrong address, however the address to which the Notice of Hearing had been sent was the same address as given for the appellant's address in the notice of application for permission to appeal to the Upper Tribunal, namely [].
4. The matter came for hearing before me on 16th November last when Mr Walker appeared on behalf of the respondent. There was no appearance by or on behalf of the appellant. I adjourned the matter in order that further enquiries can be made and the appellant was given notice of today's hearing at the same address [] by notice dated 16th February, 2018. He has not appeared, he has not sought to be represented and I am given to understand that in fact he was removed from the United Kingdom on 16th August last year. I am satisfied that the decision of the First-tier Tribunal Judge in dismissing the appellant's appeal does not contain any material error of law. Notice of Hearing was sent to the correct address. The Appellant has clearly been removed from the jurisdiction, but he could, if he had chosen to, have arranged representation. I uphold the determination of Judge Kainth. This appeal is dismissed.

Richard Chalkley

Upper Tribunal Judge Chalkley

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Richard Chalkley

Upper Tribunal Judge Chalkley
11 April 2018

Date: