



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

Appeal Number: PA/08615/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 December 2017**

**Decision & Reasons  
Promulgated  
On 16 January 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY**

**Between**

**PETHTHA THANTHRI DINUSHKA ISHARA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Dhanji, of Counsel instructed by Messrs MTC & Co Solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The appellant appeals with permission against a decision of Judge of the First-tier Tribunal Fox, who in a determination promulgated on 24 April 2017 dismissed the appellant's appeal against a decision of the Secretary of State to refuse asylum.
2. The appeal relates solely to a procedural matter which was that the appellant had employed solicitors against whom the Law Society had intervened. He therefore instructed new solicitors who were unable to

obtain the appellant's papers from the first solicitors instructed. They therefore asked for an adjournment of the hearing until those papers were received. That application was refused and they then instructed a Counsel to appear at the hearing.

3. On the day of the hearing the Counsel who was duly instructed went to the wrong hearing centre and the appellant's solicitors then instructed another Counsel who was unable to arrive at the hearing centre until 12:55 pm. The judge notes the arrival of that Counsel, Mr Sharma and then states that he was released.
4. The appellant had attended the hearing and had been there at 10 a.m.
5. Although it appears that the appellant was cross-examined the narrative relating to the evidence given by the appellant is short. The judge dismissed the appeal and an application was made to appeal to the Upper Tribunal on the basis that there had been procedural unfairness.
6. Taking into account the fact that the appellant attended the hearing, that Counsel who as initially instructed, through no fault of the appellant, did not attend but the second Counsel Mr Sharma applied late, I consider that the judge was in error in not adjourning the appeal. I am fortified in this decision when I consider the determination of the Tribunal in **MM (unfairness; E & R Sudan [2014] UKUT 00105 (IAC))**. I therefore, having found an error of law set aside the determination of the First-tier Tribunal Judge and direct that this appeal proceed to a hearing afresh in the First-tier.

### **Decision**

The determination of the First-tier Judge is set aside.

### **Directions**

I direct that the appeal proceed to a hearing afresh at Hatton Cross before a judge other than Judge of the First-tier Tribunal Fox; time estimate three hours, Tamil interpreter.

No anonymity direction is made.

Signed



Date: 10 January 2018

Deputy Upper Tribunal Judge McGeachy