



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

Appeal Numbers: HU/12667/2018

**THE IMMIGRATION ACTS**

**At Field House**

**On 18<sup>th</sup> March 2019**

**Decision & Reasons  
Promulgated**

**On 20<sup>th</sup> March 2019**

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**MOHAMMED LATIF AHMED  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms N Bustani, of Counsel, instructed by Paul John & Co Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of Bangladesh born in 1986. He arrived in the UK in 2010 as a student and had leave to remain in that capacity until

January 2015. He then made an in time application to remain on family and private life grounds, which was refused in March 2015, and his appeal to the First-tier Tribunal was dismissed in August 2016. He made a new application to remain on Article 8 ECHR grounds in February 2017, which was refused in the decision of the respondent dated 29<sup>th</sup> May 2018. His appeal against the decision was dismissed by First-tier Tribunal Judge Swinnerton in a determination promulgated on the 17<sup>th</sup> January 2019.

2. Permission to appeal was granted by First-tier Tribunal Judge Ford on 7<sup>th</sup> February 2019 on the basis that it was arguable that the First-tier judge had erred in law in refusing to adjourn the appeal when there was evidence in the form of a GP certificate from the previous day that the appellant was unfit for work due to abdominal pain. It was, thus, an arguable error of law to have determined the appeal on the basis of submissions only in the appellant's absence.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

#### *Submissions – Error of Law*

4. The grounds of appeal contend that it was an error of law not to have adjourned the hearing on 11<sup>th</sup> January 2019 as the appellant had a right to be present at his appeal and give evidence, and further he had presented a sick note from his GP that he was too ill to attend work for 7 days dated 10<sup>th</sup> January 2019 and provided an email which confirmed that he had vomiting.
5. There was no Rule 24 notice.
6. Ms Bustani and Mr Clarke agreed that there was an error of law by the First-tier Tribunal as it was procedurally unfair not to have adjourned the hearing to allow the appellant to attend his appeal and that it was appropriate to remit the appeal to the First-tier Tribunal for remaking. Ms Bustani further explained that the error was material as the appellant would have given further oral evidence about his relationship with his unwell aunt and his caring role for her.

#### *Conclusions – Error of Law*

7. The facts are as set out in the grounds of appeal and at paragraph 6 of the decision of the First-tier Tribunal: there was both a sick note and an email about the appellant being in unwell, in pain and vomiting on the day of the hearing. The First-tier Tribunal found that it was not unfair to refuse to adjourn as there was a statement from the appellant and no presenting officer so there would have been no cross-examination. However, I find, and it is agreed by the parties, that as the appellant wished to give oral evidence at his appeal to elaborate on his written statement and was deprived of the opportunity to do so it was not fair

to have refused to adjourn the hearing given the cogent evidence of his being too unwell to attend the hearing.

8. In accordance with Practice Statement 7.2 of the Senior President's Practice Statements of 10 February 2010 (as amended) as the appellant has been unfairly deprived of his opportunity to put his case in full to the First-tier Tribunal I decide that the remaking process should take place by way of a remittal.

Decision:

1. The making of the decision of the First-tier Tribunal involve the making of an error on a point of law.
2. I set aside the decision and all of the findings of the First-tier Tribunal
3. I remit the appeal to the First-tier Tribunal to be heard de novo.

Signed: Fiona Lindsley  
Upper Tribunal Judge Lindsley

Date: 18<sup>th</sup> March 2019