



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

Appeal Number: HU/11191/2016

THE IMMIGRATION ACTS

**Heard at Field House
On: 2 October 2018**

**Decision and reasons
Promulgated
On: 31 October 2018**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

**MR PHURIWAT VICHENARAT
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr S Bellara of Counsel

For the respondent: Ms A Everett, Senior Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Thailand, appealed against the decision of the respondent, refusing to Tim further leave to remain in the United Kingdom under Appendix FM of the immigration rules and Article 8 of the European Convention on Human Rights. First-tier Tribunal Judge C Greasley dismissed the appellant's appeal in a decision promulgated on 20 April 2018.

2. Permission to appeal was granted by First-tier Tribunal Judge PJM Hollingworth on 13 August 2018 stating that it is arguable that unfairness has been seen to arise because the appellant was not represented at the hearing because Counsel was not able to attend.
3. At the hearing there was no dispute that unfairness had arisen because the appellant was not represented at the hearing as Counsel was not able to attend due to a family bereavement and was urgently required to fly abroad with his wife and daughter. The solicitors for the appellant had sent a fax on the morning of the hearing and Counsel had telephoned the appellant on the morning of the hearing telling him he could not attend the hearing. Mr Bellara said that it was the Easter break and therefore it was not possible to instruct an alternative Counsel.
4. The appellant is entitled to legal representation and through no fault of his he was not able to receive it at the hearing. The appellant's legal representatives took all due steps to inform the Tribunal that Counsel could not attend the hearing. In the circumstances the appeal hearing should have been adjourned. As a consequence, unfairness has resulted.
5. In the circumstances, I direct that the appeal be placed before any First-tier Tribunal Judge apart from first-tier Tribunal Judge C Greasley for the appeal to be heard de novo.

Decision

Appeal remitted to the First-tier Tribunal

Signed by

A Deputy Judge of the Upper Tribunal

Ms S Chana

Dated this 23rd day
of October 2018