



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

Appeal Number: HU/21755/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27 August 2019**

**Decision & Reasons Promulgated  
On 5 September 2019**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**MR SANTOSH LAMICHHANE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr P Richardson (instructed by Paul John & Co, Solicitors)  
For the Respondent: Miss J Isherwood (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Appellant in relation to a Decision and Reasons of Judge Sullivan in the First-tier Tribunal promulgated on 22 May 2019. It was a human rights appeal by a citizen of Nepal. Also, claiming as his dependants, were his wife and two children.
2. The reason that I am allowing the appeal to the Upper Tribunal to the extent that it is set aside and remitted to the First-tier Tribunal is the judge's failure to adjourn on the day amounted to a procedural unfairness. I say that because there was clear evidence before the judge that the Appellant had been taken, on the morning of the hearing, with chest pains

to Accident and Emergency/an Urgent Care Centre where he was given an ECG. That fact was communicated to the Judge in the morning. Happily, he was discharged to see his GP and warned to remain calm. However, he was clearly unwell and the judge, having checked the situation in the morning, decided that he would put the matter back to the afternoon when the Appellant did in fact attend and the judge then proceeded with the hearing.

3. I am persuaded that the judge in those circumstances ought not to have proceeded with a clearly very vulnerable and unwell Appellant. I can see that the judge did take steps to treat the Appellant as a vulnerable witness offering breaks. However, I am also satisfied that given the circumstances on the day the Appellant did not have a fair hearing.
4. It is not in the grounds but I think it is also significant that another person who might have given valuable evidence was his wife, but at the time she had given birth only a few days earlier to their second daughter and had herself some health issues at the time so there would have been ample reason to have adjourned this appeal.

### **Notice of Decision**

### **Directions**

5. On the basis that the initial hearing was tainted by unfairness I set the Decision aside and remit it for a full rehearing before the First-tier Tribunal.
6. The appropriate hearing centre remains Hatton Cross before any judge other than Judge Sullivan.
7. No anonymity direction is made.



Signed

Date 29 August 2019

Upper Tribunal Judge Martin