



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: HU/01428/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 28 November 2019**

**Decision & Reasons
Promulgated
On 3 December 2019**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**AVTAR [S]
(ANONYMITY ORDER NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes before me following the grant of permission to appeal by First-tier Tribunal Judge Hollingworth on 2 September 2019 against the determination of First-tier Tribunal Judge Traynor, promulgated on 20 June 2019 following a hearing in the appellant's absence at Taylor House on 3 April 2019.

2. The appellant is an Indian national born on 8 February 1951. He entered the UK on 12 August 2013 (according to Home Office records and not 15 July 2014) with a visit visa valid until 15 January 2015 (not 19 January 2014). On 12 January 2015, he made an application for leave to remain on private and family life grounds. That was refused on 4 March 2015. Following a subsequent hearing, at which the appellant was represented, and he and his daughter gave oral evidence, the appeal was dismissed by First-tier Tribunal Judge Woodward by way of a determination dated 25 August 2015. The appellant did not embark. A year later, on 30 August 2016, another application was made. That was refused on 11 February 2017. The present application was made on 28 February 2017. Prior to the appellant's arrival here, he lived in India. He was widowed in 1995. He has numerous health issues.
3. The appellant did not attend the hearing of his appeal before Judge Traynor on 3 April 2018. The judge was satisfied that the appellant had been properly served with the notice of hearing and that no explanation for non-attendance had been forthcoming. In the circumstances, he proceeded to deal with the appeal in the appellant's absence. He took the previous Tribunal's determination as his starting point and noted that the family/private life issues had already been taken into account and remained the same. He accepted that the appellant suffered from Parkinson's Disease and that he had other physical and mental illnesses. He found, however, that the appellant had been treated for his conditions in India prior to arrival and that he could continue to receive treatment in India, funded, if necessary, by his daughter, the sponsor. He found that the appellant's ill health did not meet the article 3 threshold. He also found that there were no very significant obstacles to his reintegration. He also found that the sponsor had not taken any steps to make arrangements for his care in India or to show that this could not be done. He found, like Judge Woodward, that the appellant had the option of making an entry clearance in the proper manner from India. He dismissed the appeal.
4. In his grounds of appeal, the appellant, or someone on his behalf, maintained that there had been a mistake over the date of the hearing and that he and his family had attended for the hearing the next day. Reliance was placed on the medical evidence and it was argued that the appellant had established a private and family life with his daughter and grandchildren in the UK.
5. Permission to appeal was granted on the basis that given the accepted conditions of the appellant, the judge had arguably

erred in proceeding with the appeal in his appeal and without making any enquiries as to the reasons for non-attendance.

6. There has been no Rule 24 response from the Secretary of State.

The Hearing

7. The appellant was in attendance but was unable to take any part in the proceedings due to his ill health. His daughter and her cousin attended. They explained that the daughter had confused a medical appointment with the hearing date and so they turned up a day late for the appeal hearing.
8. Ms Cunha submitted that it would have made no difference to the outcome of the appeal even if the parties had attended as the appellant would not have been able to give evidence and in any event the law was such that his article 8 claim could not succeed.
9. At the conclusion of the hearing, I indicated that I would be setting aside the decision of the First-tier Tribunal Judge. I now give my reasons for so doing.

Discussion and Conclusions

10. I have considered all the evidence and the submissions made.
11. It is plain that the appellant has a great many health issues and that these were accepted by the judge. It is also a fact that the appellant was unrepresented but that he had sought an oral hearing. There is no dispute over the fact that the appellant failed to attend the hearing, although he turned up the following day with his family apparently having confused the dates. The judge on the date of hearing was satisfied that the notice of hearing had been properly served and that there had been no explanation for the non-attendance. In most cases, I would have considered that to be a fair and satisfactory approach. However, in the circumstances of this case, where there are clear and obvious serious health issues, I consider that the judge erred by proceeding in the appellant's absence. Fairness dictates that the appellant should have been given another chance to attend and that the appeal should have been adjourned. Whether the appeal can succeed is another matter, but it is in the interests of justice that the appellant and/or his daughter has the opportunity to put his case to the Tribunal.

12. In the circumstances, I set aside the determination of the First-tier Tribunal. The matter shall be remitted back to the Tribunal for another judge to hear the evidence and to make a fresh decision.

Decision

13. The decision of the First-tier Tribunal is set aside and a fresh decision shall be made by another judge of that Tribunal.

Anonymity

14. No request for an anonymity order was made.

Directions

15. No later than 7 days prior to the date of hearing, the appellant shall serve on the First-tier Tribunal and the Presenting Officers' Unit a statement of evidence setting out his claim and a statement from his daughter which explains his health issues, the care and support he receives in the UK and why he would be unable to receive care in India.
16. An up to date letter from the appellant's doctor should also be filed within the same time frame. This should include information as to the appellant's fitness to attend court.
17. If it is envisaged that the appellant will be fit to give oral evidence, then an interpreter must be requested no later than 7 days prior to the date of hearing.

Signed



Upper Tribunal Judge

Date: 28 November 2019