



IAC-FH-CK-V1

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

Appeal Number: IA/24512/2013

THE IMMIGRATION ACTS

Heard at Field House

**On 8th October 2014
Extempore Judgment**

Determination

**Promulgated
On 27th October 2014**

Before

**THE HON. MR JUSTICE T R A KING
UPPER TRIBUNAL JUDGE MARTIN**

Between

MR MD NOOR HOSSAIN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Khan (Immigration4u)

For the Respondent: Mr S Walker (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant in relation to a Decision of the First-tier Tribunal taken by Judge Aziz at Hatton Cross on 18th December 2013. His Decision followed a hearing on 13th December 2013 and the appeal was about a citizen of Bangladesh who had originally come into the UK in 2011 as a student and who had applied for leave to

remain outside the Rules to have medical treatment. That application was refused and it was the appeal against that refusal which came before Judge Aziz.

2. On that day there was no appearance by either the Appellant or his representative. The Judge noted in his determination at paragraph 8 that the Appellant did not attend, the representative did not attend and no explanation was provided for their failure to attend. Thus matters proceeded by way of submissions only.
3. The grounds upon which permission to appeal was granted point out that in fact the day before the hearing, a fax was sent to Hatton Cross requesting an adjournment on the basis that the Appellant was ill. That fax was not dealt with by the administration and indeed it did not reach the court file until some days later, 16th December 2013. The Judge therefore was unaware that there had been an adjournment application.
4. It is regrettable that the letter which had plainly been faxed on 12th December 2013 was not immediately brought to the attention of the Judge but it was not. It is also plain that at a previous hearing in October the Appellant and his representative both attended, so it is clear that the Appellant had intended to attend his appeal hearing and give evidence.
5. On that basis the Tribunal should have considered an adjournment application and the explanation and so the Judge, through no fault of his own has made an error of law. There was a procedural error which gave rise to an unfairness amounting to an error of law.
6. We have in mind the recent decision of the President of the Upper Tribunal in Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) which makes it clear that when considering an adjournment request the main point is whether the appeal can be decided fairly without an adjournment. Clearly this case is one where it was unfair. The Appellant has not had his appeal heard properly and for that reason we set aside the Decision of the First-tier Tribunal. As the Appellant has not had a fair and proper hearing before the First-tier it is an appropriate case to remit to the First-tier Tribunal for a full de novo rehearing and we do so.

Signed

Date 20th October 2014

Upper Tribunal Judge Martin