



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

Appeal Number: IA/00607/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 11 February 2016**

**Determination Promulgated
On 25 February 2016**

Before

DEPUTY JUDGE DRABU CBE

Between

MR ANBALAGAN SATHAIYAH

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms J Isherwood, Senior Presenting Officer.

DECISION AND REASONS

1. The appellant in this appeal is a national of India whose date of birth is 27 June 1986. His appeal against the decision of the respondent refusing to grant him leave to remain and to remove him by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006 was heard and dismissed by Judge Hodgkinson, a Judge of the First Tier Tribunal for reasons given in his determination promulgated on 7 August 2015. There was no appearance at the hearing by or on behalf of the appellant as well as the respondent. The appellant sought and was granted permission to appeal to the Upper Tribunal on 17 December 2015 by Judge P J M Hollingworth, a Judge of the First Tier Tribunal.

2. In its response to the grant of permission the respondent contends *inter alia* that the assertion made by the appellant in his grounds of appeal that he had sought adjournment of the hearing before the First Tier but that application had not been considered by the Tribunal is unproven. The respondent also contends that she has not had sight of any evidence that the appellant was not fit to attend the hearing of his appeal before the First Tier Tribunal on 23 July 2015.
3. For the hearing before me a fax had been received the day before from Shrewsbury Road Surgery, Forest Gate, London stating that the appellant “has been suffering from depression with difficulty sleeping intermittently since 2014. Recently his symptoms got worse and attended surgery few times for the same. He has been assessed and started on antidepressants and also been referred for counselling.” The fax was not accompanied by a letter or note from the appellant seeking adjournment of the hearing. Nevertheless, I treated the letter from Shrewsbury Road Surgery as an application for adjournment.
4. I gave careful consideration to the faxed letter from the appellant’s surgery. I noted that the letter does not state that the appellant is unfit to attend the hearing. It certifies that the appellant has last attended the surgery on 4 February 2016 when he was put on anti depressant medication. I note that the letter does not state that the appellant has been a regular visitor to the Surgery but simply that after his last visit on 10 July 2014, the appellant had next visited the surgery on 4 February 2016 complaining of insomnia and depression. Upon this information I was not persuaded that I should adjourn the hearing listed before me. I was satisfied that the appellant had received valid notice of the hearing and that if he had wanted to he could and should have attended the hearing either in person or through an appointed legal representative.
5. In the circumstances I proceeded with the hearing. On the case file I found no evidence that the appellant had sought an adjournment of the hearing before the First Tier Tribunal as he contends in the grounds of appeal upon which he was granted permission to appeal. The assertion is not proved and the suggestion that the hearing took place without regard for Rules of Natural Justice has not been made out. I have looked at the determination of Judge Hodgkinson with care and I find that the Judge has directed himself properly on the facts before him and the law relevant to those facts. I find that even if the appellant had attended the hearing, the result would not have been any different on the facts that had been presented to the respondent and the Judge. It is a matter of great surprise that the appellant secured permission to appeal to the Upper Tribunal. I have sympathy for the argument advanced by the respondent that the Judge granting permission had not used the correct legal criteria for grant of permission.
6. I find that the determination of Judge Hodgkinson was not in material error of law and must therefore stand. This appeal is dismissed.

K Drabu CBE

Deputy Judge of the Upper Tribunal.
20 February 2016