



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

Appeal Numbers: HU/03787/2016
HU/03791/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 11 April 2019**

**Decision & Reasons Promulgated
On 13 May 2019**

Before

**UPPER TRIBUNAL JUDGE FREEMAN
DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

Between

**MRS ANITA TAMANG THEENG
MR KUBER TAMANG
(ANONYMITY ORDER NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Wilcox, counsel

For the Respondent: Mr T Melvin, Senior Presenting Officer

DECISION AND REASONS

1. The Appellants, nationals of Nepal, appealed against the Respondent's decisions to refuse applications made on 5 October 2015 for settlement in the United Kingdom outside the Immigration Rules. Those applications were refused by the Respondent on 29 January 2016. The Appellants, dates of birth respectively 28 November 1988 and 9 March 1987, had their

appeals heard before First-tier Tribunal Judge Khawar (the hearing judge) who on 19 February 2018 dismissed their appeals on all grounds.

2. Permission to appeal was granted by Upper Tribunal Judge N Finch on 5 November 2018. The substantive point being pursued in the application was that there was procedural unfairness amounting to an error of law because the Judge had refused an adjournment pressed on grounds of the first Appellant's medical health. When the appeals came before the Judge, the Respondent was not represented, nor were the Appellants represented, and neither of the Appellants attended the hearing.
3. An earlier hearing of their appeal had been adjourned because cogent evidence had been provided to show that the first Appellant had undergone recent colorectal surgery and was still recuperating. Prior to the hearing on 6 September 2018 an application was made to the First-tier Tribunal which was considered by Designated Immigration Judge Shaerf who refused the application.
4. The reasons given by Judge Shaerf was that the Appellant had failed to provide medical evidence which explained why she was unable to attend a hearing. The medical evidence provided dated 24 November 2017 and 15 November 2017 did not provide any explanation as to why she could not attend the hearing of the appeal in 2018. There was therefore no unfairness in Judge Shaerf's decision to refuse the adjournment request. The evidence did not at that stage support any conclusion that there was a need for an adjournment.
5. Before us some evidence was served which suggested that some limited information was put before the hearing judge. On a fair reading of that material it seemed to us that a medical certificate which simply said that the first Appellant was not fit to work, bearing in mind the first Appellant did not have a job, was simply a GP's sick note; but does not address

either of the first Appellant's current health conditions, showing that she could not comfortably attend a hearing, or give evidence.

6. An additional document provided indicated that the first Appellant would be undertaking a hospital appointment for an examination on 16 January 2018 did not show that there was any basis for her non-attendance at the hearing.
7. In those circumstances the reference in the sick note to the Appellant fainting and/or vomiting was unexplained in terms of when that particular ailment had started, whether it was being treated and whether or not it rendered her circumstances such that she could not attend and could not comfortably give evidence of her claim.
8. Mr Wilcox was unable to tell us why the second Appellant did not attend the hearing of his appeal, nor why the representatives did not attend. He had no instructions; but it was unclear whether or not those questions had even been asked of them. Mr Wilcox took us to the correspondence relating to this matter and that did not shed any light on the first Appellant's ability to give evidence.
9. In the circumstances therefore, the hearing judge may have made an error, if he thought that there had been 'no evidence put forward' in correspondence seeking an adjournment of the hearing; but the error was not material. The fact was that the evidence fell far short of that which could reasonably be expected to be put forward on an application for an adjournment on health grounds. In reaching that view we are certain that Judge Shaerf made no errors whatsoever in dealing with the application for an adjournment.
10. On the evidence that was provided, even if it was not seen by the hearing judge, leading to the remarks he made, it seemed to us that any other Tribunal reasonably aware of the history and process of the applications

that had been made before the hearing would not have reached any other view than that which the hearing judge arrived at in relation to the absence of sufficient material to conclude the first Appellant was unable to attend the hearing.

11. The hearing judge also went on to consider the merits and evidence in the case and for our own part, considering the grounds, it did not seem to us that there was any substance in the points being taken about the matter or the hearing judge's decision. There is also the important point that there was no reason at all why the second Appellant or the representatives, should not have come to the hearing, and no explanation, then or now, why he should not have given evidence effectively on behalf of both of them.
12. Given the centrality of the issue taken about the failure of the hearing judge to consider the adjournment of this matter, we did not conclude there was any merit whatsoever in the grounds. Whilst it was reasonable to grant permission, so they could be further investigated, having done so we find the decision under appeal involved no material error of law.
13. This case is a good example of where an adjournment is sought based on a sick note which simply addressed fitness to work and where there is nothing to indicate what, if anything, was being done with any malady that was being suffered at the material time, or how it impinged on an ability to have a fair opportunity to present the case. The lack of any explanation for the absence of the representatives or the second Appellant is also very significant.

NOTICE OF DECISION

14. The appeal is dismissed.

ANONYMITY ORDER

No anonymity order was required.

Signed

Date 8 May 2019

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

The appeal has been dismissed therefore no fee award is appropriate.

Signed

Date 8 May 2019

Deputy Upper Tribunal Judge Davey