



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

Appeal Number: IA/19380/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13<sup>th</sup> June 2014**

**Determination  
Promulgated  
On 17<sup>th</sup> June 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**MR MD NAZRUL ISLAM  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Mr T Wilding, Home Office Presenting Officer

**DETERMINATION AND REASONS**

*Introduction*

1. The appellant is a citizen of Bangladesh born on 18<sup>th</sup> October 1976. He arrived in the UK on 11<sup>th</sup> March 2004 as a student, and his leave was extended in this capacity and then as a Tier 1 post study migrant until

12<sup>th</sup> January 2013. On 5<sup>th</sup> December 2012 he applied to extend his leave as a Tier 1 (entrepreneur) migrant. This application was refused on 13<sup>th</sup> May 2013. His appeal against this decision was dismissed by First-tier Tribunal Judge RJNB Morris after a hearing on 18<sup>th</sup> February 2014.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Nicholson in a decision dated 23<sup>rd</sup> April 2014 on the basis that it was arguable that the First-tier judge had erred in law in hearing the appeal in the appellant's absence. Whilst there was no fault on Judge Morris's part in proceeding there was now medical evidence from the appellant's GP that he was unfit to attend the hearing.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

### *Submissions*

4. Mr Wilding did not have the medical evidence and other communications which had been sent to the Tribunal. I showed him the relevant correspondent on the Tribunal file which consisted of the following. An urgent fax sent by the appellant's friend, Mr Iqbal Hossain, sent on the day of the hearing which said the appellant could not attend because he was seeking emergency medical treatment and which requested an adjournment of the hearing. A GP letter stating that the appellant had attended the GP surgery with gastroenteritis on the day of the hearing and been given hydration salts, and that he was not fit to attend, together with his prescription for anti-depressant medication. An email to the customer service for the First-tier Tribunal from the appellant following up his friend's request for an adjournment and asking what the outcome of his friend's request had been. On sight of these documents Mr Wilding agreed that there was a procedural error of law; and it would be appropriate to remit the appeal to the First-tier Tribunal for a de novo hearing of the appeal.
5. I explained to the appellant that it would be appropriate for his case to be heard again in the First-tier Tribunal for the reasons set out below, and a date of 27<sup>th</sup> November 2014 at Hatton Cross Hearing Centre was arranged in conjunction with the appellant. He confirmed that he was happy with these arrangements.

### *Conclusions*

6. The appellant was too unwell to attend the Tribunal on 18<sup>th</sup> February 2014 as he was suffering from gastro-enteritis. He did his best to alert the Tribunal to this fact by asking a friend to send a fax to the Tribunal requesting an adjournment of his case. He attended his GP and was given medication, and has since provided the Tribunal with evidence of his ill-health which also gives the doctor's opinion that he was not fit to attend the Tribunal on the day of his hearing. In the light of this evidence it was clearly a procedural error of law for the First-tier

Tribunal to have proceeded to determine the appeal. The right to be heard is of fundamental importance, and as such it is appropriate that the determination of Judge Morris be set aside and the case is remitted to the First-tier Tribunal for hearing de novo in accordance with FP (Iran) v SSHD 2007 EWCA Civ 13.

### Decision

7. The decision of the First-tier Tribunal involved the making of an error on a point of law.
8. The decision of the First-tier Tribunal is set aside
9. It is appropriate to remit this matter to the First-tier Tribunal for hearing de novo in accordance with the Senior President's Practice Statement on Remittals at paragraph 7.2 as the effect of the error has been to deprive the appellant of the opportunity to put his case to the First-tier Tribunal.

Deputy Upper Tribunal Judge Lindsley  
16<sup>th</sup> June 2014