



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

Appeal Number: HU/11430/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 February 2019**

**Decision & Reasons  
Promulgated  
On 14 March 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**ARSHADUL HUSSAIN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Burrett of Counsel, instructed by Miya Solicitors  
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is a challenge by the Appellant, with permission, against the decision of First-tier Tribunal Judge Rodger (the judge), promulgated on 20 September 2018, whereby he dismissed the Appellant's appeal against the decision of the Respondent, dated 19 April 2016.
2. The judge proceeded in the Appellant's absence and indeed in the absence of any representative on his behalf. This was done on the basis that the notice of hearing had been sent out to the Appellant's previous solicitors Malik Law Chambers and to his home address.

3. The judge was aware that the previous solicitors had been intervened by the Solicitor's Regulatory Authority but was satisfied that because of the service to the home address the Appellant would have been aware of the hearing and there was no good reason for his non-attendance. The specific consideration of this issue is set out in [16] through to [23] of the judge's decision.
4. His decision was challenged on procedural fairness grounds. It was asserted that the issue of the previous solicitor's intervention and subsequent instruction of new solicitors had caused problems in respect of attendance at the hearing. More importantly, it was claimed that following two accidents at home in March 2018, the Appellant had suffered catastrophic injuries resulting in him becoming tetraplegic and being confined to a wheelchair. He had been in hospital at the time the notice of hearing was sent out and received at the home address and indeed, as it transpires, all the way through until after the hearing itself.
5. Unfortunately, and perhaps due to the change in representation, the judge does not seem to have been aware of the Appellant's injuries and subsequent hospitalisation.
6. There is no reason for me to doubt the assertions put forward in respect of either the change of representation issue or the Appellant's time in hospital.
7. In my view, there has been a material procedural unfairness, particularly on the basis that the judge was unaware of material facts. I am satisfied that the Appellant was indeed in hospital from March 2018 all the way through to late September 2018. Thus, I am satisfied that the Appellant was unaware of the hearing date as were his new representatives who, whilst coming on record just prior to that date, were only aware of it a day later.
8. In light of my conclusion, the judge's decision must be set aside.
9. By way of disposal this matter clearly needs to be remitted to the First-tier Tribunal for a complete rehearing. The effect of the judge's error is that the Appellant has effectively not had a hearing at all.

### **Notice of Decision**

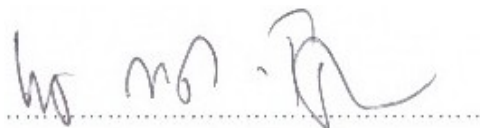
**The decision of the First-tier Tribunal contains a material error of law and I set it aside.**

**This appeal is remitted to the First-tier Tribunal for a complete rehearing with no preserved findings.**

**No anonymity direction is made.**

**Directions to the First-tier Tribunal**

- 1. The remitted appeal shall be heard at the Taylor House hearing centre;**
- 2. The remitted appeal shall not be heard by First-tier Tribunal Judge Rodger;**
- 3. It would be useful for this matter to be set down for an oral case management hearing. There are several strands to the Appellant's case, including deportation. Further, the consequences of the injuries suffered in 2018 may, if relied on in support of his appeal, constitute a "new matter" within the meaning of section 85(6) of the NIAA 2002.**



Signed

Date: 12 March 2019

Deputy Upper Tribunal Judge Norton-Taylor