



IAC-AH-DN-V1

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

Appeal Numbers: HU/16860/2019
HU/16862/2019

THE IMMIGRATION ACTS

**Decided without a hearing
On 26 March 2021**

**Decision & Reasons Promulgated
On 9 April 2021**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**SABINA [S]
MIJJAL [S]
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**These appeals have been decided without a hearing, pursuant to rule
34 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

DECISION AND REASONS

Background

1. The Appellants, citizens of Nepal and husband and wife, appeal with permission against the decision of First-tier Tribunal Judge Shiner (“the judge”), promulgated on 22 December 2020, by which he dismissed their appeals against the Respondent’s refusal of their human rights claim. That claim and the appeals to the First-tier Tribunal focused in large part on the second Appellant’s mental health. It was said that he suffered from

significant problems and that it would be contrary to Articles 3 and/or 8 ECHR to require a return to Nepal.

Discussion and decision on error of law

2. At the outset of the hearing before the judge, an application was made to adjourn in order to obtain further medical evidence on the second Appellant's mental health circumstances. It was said that this was necessary because as a result of the Covid-19 pandemic he had been unable to engage with relevant services for a significant period of time. The application was refused (see [23] and [24] of the decision). The judge went on to consider the evidence that was before him and concluded that the appeals should be dismissed on all grounds.
3. The grounds of appeal covered both the procedural and substantive aspects of the judge's decision.
4. Following the grant of permission, the Respondent provided a rule 24 response in which it was stated that the Respondent did not oppose the Appellants' appeals to the Upper Tribunal. It was accepted that in the particular circumstances of this case the judge should have adjourned the hearing to enable the Appellants to obtain up-to-date medical evidence. The Tribunal was invited to set the First-tier Tribunal's decision aside and to re-make the decision in the case following a resumed hearing.
5. In further correspondence between the Respondent and Appellants' representatives prior to the error of law hearing, the concession made in the rule 24 response was confirmed with an amendment, namely that the appeals should in fact be remitted to the First-tier Tribunal for a complete rehearing with no preserved findings of fact. This approach was agreed to by the Appellants' representatives, as confirmed in an email dated 25 March 2021.
6. In light of the correspondence and having concluded that the Respondent's concession was properly made, I informed the parties that the hearing listed for 26 March 2021 need not go ahead and that I would issue a decision without a hearing pursuant to rule 34 of the Upper Tribunal's Procedure Rules.
7. I conclude that the judge did err in law by refusing the adjournment, as recognised by the Respondent in her rule 24 response. In short terms, the decision not to adjourn was, in all the circumstances, unfair.
8. I agree that I should exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set the judge's decision aside.
9. In the particular circumstances, I also agree that these appeals should be remitted to the First-tier Tribunal for a complete rehearing and with no

preserved findings of fact. I note that the Appellants' representatives have submitted up-to-date medical evidence on behalf of the second Appellant in particular. This is contained in a supplementary bundle indexed and paginated 1-22. I make no comment on this evidence, but I do admit it in evidence at this stage.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set aside the decision of the First-tier Tribunal.

I remit these appeals to the First-tier Tribunal.

No anonymity direction is made.

Directions to the First-tier Tribunal

- 1) These appeals are remitted to the First-tier Tribunal (Taylor House hearing centre);**
- 2) The remitted appeals shall be conducted by a judge other than First-tier Tribunal Judge Shiner;**
- 3) No findings of fact are preserved.**

Signed H Norton-Taylor

Date: 30 March 2021

Upper Tribunal Judge Norton-Taylor