



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

Appeal Number: HU/00292/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 10th September 2021**

**Decision & Reasons Promulgated
On 12th October 2021**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**HIMANSHUKUMAR JITENDRABHAI PATEL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Khan, direct access

For the Respondent: Mr Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of India born on 4 June 1980. He appeals against the decision of First-tier Tribunal Judge P Quinn, promulgated on 7 April 2021, dismissing his appeal against the refusal of leave to remain (on the basis of ten years' long residence) on human rights grounds.
2. Permission to appeal was granted by First-Tribunal Judge Parkes on 18 May 2021 for the following reasons:

“The Appellant’s immigration history set out at paragraphs 6 to 8 show that the Appellant had a gap in his lawful residence and so could not meet the 10 year route and the evidence of family life was missing. The Tribunal had made efforts to contact the Appellant without success. With some hesitation I am prepared to grant the Appellant permission on the grounds that contact could not be made but evidence will be required to provide support to the claim that efforts were made and failed. The Appellant will also need to confirm

the contact details that were being used and had been provided to the Tribunal. Permission to appeal is limited to a fair hearing point.”

3. The Appellant provided evidence to show that efforts were made to join the remote hearing before the First-tier Tribunal hearing. There was medical evidence to show the Appellant had heart surgery in November 2020. The Appellant’s wife spoke to someone at the Tribunal on the day of the hearing and was of the view the hearing would be relisted. The Appellant’s wife had some difficulty in communicating in English.
4. Mr Clarke accepted there had been a procedural irregularity and the Appellant had been denied a fair hearing. It was agreed by the parties the decision should be set aside and the appeal remitted to the First-tier Tribunal for rehearing.
5. It is unfortunate Judge Quinn was not made aware of the Appellant’s attempts to contact the Tribunal prior to promulgation of the decision. I find there has been a procedural irregularity such that the Appellant has been denied a fair hearing. I set aside the decision promulgated on 7 April 2021. The appeal is remitted to the First-tier Tribunal. None of the judge’s findings are preserved.

DIRECTIONS

- (i) The appeal is remitted to the First-tier Tribunal to be re-heard *de novo* by a judge other than Judge P Quinn. None of the Judge Lever’s findings are preserved.
- (ii) The Appellant to file and serve any further evidence upon which he intends to rely no later than 28 days before the hearing.
- (iii) The Appellant and Respondent to file skeleton arguments no later than 14 days before the hearing.
- (iv) A Gujarati interpreter is required.

Notice of Decision

Appeal allowed

J Frances

Signed
Upper Tribunal Judge Frances

Date: 13 September 2021

TO THE RESPONDENT
FEE AWARD

I make no fee award. The appeal remains outstanding.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 10 September 2021