



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

Appeal Number: HU/25215/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 20 December 2018**

**Decision & Reasons
Promulgated
On 24 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

**LEBOHANG [M]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Gajjar, of Counsel instructed by Messrs A C Gilead Solicitors

For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against a decision of Judge of the First-tier Tribunal Gribble who in a determination promulgated on 3 January 2018 dismissed the appellant's appeal for leave to remain on human rights grounds on the basis that he was entitled to indefinite leave to remain as he had ten years' continuous lawful residence in Britain.
2. The appeal was listed for 21 December 2017. On 18 December the appellant's solicitors had sent a fax to the Tribunal stating that the appellant had suffered a vicious attack the previous day. Attached to the

letter were three photographs which I have seen showing horrific injuries to the appellant's face. After a request from the Tribunal a sicknote stating that the appellant was not fit for work because of a hand fracture was faxed through. This was sent by the GP referral unit of the hospital which the appellant had attended.

3. There was no appearance by or on behalf of the appellant at the hearing and the judge decided to determine the appeal on the basis of the evidence before him. There is now before me a letter requesting that the appellant attend the Maxillo Facial Unit of the John Radcliffe Hospital on 12 January, that letter being dated 9 January 2018.
4. The grounds of appeal asserted that the judge should have adjourned the appeal. Ms Pal argued that the reality was that the judge had reached the only conclusion that he could have reached on the human rights claim which was that the appellant did not qualify for leave to remain either within or outside the Rules. The appellant who had had leave to remain as a student and then as a carer had entered a civil partnership in 2012 with a man who had died three years later. It appears there a human rights claim made because the claim related to the appellant's relationship with his dead partner's family.
5. While there is considerable merit in the arguments put forward by Ms Pal that the appellant's appeal could not succeed the reality is that in my view the evidence put forward on the application for the adjournment was overwhelming given the nature of the injuries and what I will consider to be the likely subsequent trauma that the appellant would have suffered which would mean that he would not be able to give his best if any evidence at a hearing and that therefore it could not be said that he would have had the fairest possible hearing. While I consider that the appellant's solicitors should have attended the hearing and repeated their request for the adjournment and indeed I consider that the appellant could also have attended and indicated why he could not attend. I consider that it is appropriate that I remit this appeal for a further hearing on all grounds in the First-tier Tribunal.
6. I am fortified in that decision when I note that the appellant had been asked to attend a hearing in October 2017 and that he had attended with Counsel but that the hearing had been adjourned then through no fault of his own because of a lack of court time and that it had then been relisted for 21 December. The appellant had therefore shown his willingness to attend the hearing.
7. I consider that the judge erred in law in not adjourning the hearing and I therefore set aside his decision.
8. I direct that the appeal now be listed for a further hearing in the First-tier Tribunal.

No anonymity direction is made.

Signed 

Date: 11 January 2019

Deputy Upper Tribunal Judge McGeachy