



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

Appeal Number: AA/07893/2011

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 3 July 2013**

**Determination  
promulgated  
on 4 July 2013**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**MOHAMMED TAWHIDUL ISLAM**

Appellant

**and**

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

Respondent

For the Appellant: Miss S Hoey, of Drummond Miller Solicitors  
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

- 1) The appellant is a citizen of Bangladesh, born on 15 August 1983. He appeals against a determination by First-tier Tribunal Judge Clough, promulgated on 29 December 2011, dismissing his appeal on asylum and on all other grounds.

- 2) At paragraph 11 of her determination the judge found the appellant not to be a credible witness. She then set out the terms of a medical report and at paragraph 16 said:

I have already found the appellant's accounts of his detention ... not credible. While the appellant has scars as detailed in the medical report, I do not accept that they were caused during detention in Pakistan.

- 3) Assessments of credibility must be made on the basis of a holistic assessment of all the evidence, including any medical report. It is incorrect to come to a negative assessment of credibility and then to ask whether that assessment is displaced by other material. The Presenting Officer conceded that this case falls into the category of error described in Mibanga [2005] INLR 377.
- 4) Miss Hoey advised that at any further hearing it was not proposed to take additional oral evidence from the appellant. An interpreter need therefore not be booked. The appellant may seek to file a further report on his mental condition. No steps have yet been taken in that respect. The admission of any further report will be a question for the judge rehearing the case.
- 5) The determination of the First-tier Tribunal is **set aside** in its entirety. No findings are to stand. Under section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal. The member(s) of the First-tier Tribunal chosen to reconsider the case are not to include Judge Clough.



4 July 2013  
Judge of the Upper Tribunal