



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

Appeal Number: AA/04112/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29 April 2015  
Prepared 29 April 2015**

**Decision & Reasons Promulgated  
On 26 May 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**MOHAMMAD IFRAN  
(ANONYMITY DIRECTION)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss F Allen, Counsel, instructed by Bespoke Solicitors  
For the Respondent: Miss A Brocklesby-Weller, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Bangladesh, date of birth 13 May 1989, appealed against the Respondent's decision, dated 17 June 2014, to make removal directions pursuant to Section 10 of the Immigration and Asylum Act 1999, an asylum/human rights based claim having been refused, and a notice under Form IS151A having been served on 17 May 2014. The appeal came before First-tier Tribunal Judge J D L Edwards who, on 29 January 2015, promulgated his decision in which the appeal was dismissed on asylum, Humanitarian Protection and human rights grounds.

2. Before the judge the Appellant was represented by Miss C Physsas, Counsel, and the Respondent by Mr A Bassi, Home Office Presenting Officer.
3. Permission to appeal against the judge's decision was given by First-tier Tribunal Judge P J G White on 26 February 2015 and the Respondent made a Rule 24 response on 11 March 2015.
4. In representing the Appellant today Miss Allen provided a copy of a witness statement from Counsel, Miss Clare Physsas, concerning her attendance note, notes of hearing and recollection of the hearing before the judge.
5. The gravamen of the evidence provided is that essentially Miss Physsas endeavoured to deal with a number of procedural points. It is said the judge did not permit procedural fairness to take place to the extent that the hearing was unfair and/or the conduct of the hearing gave rise to the appearance of bias. It is plain from Miss Physsas's note that she raised a number of points at the hearing which were not sympathetically received by the judge. In particular she sought time to take instructions, had to deal with late production of documents by the Presenting Officer, and at some point the judge was shown by the Presenting Officer a Home Office document or documents which were not disclosed to Miss Physsas but in part something of the document was referred to in the judge's determination.
6. It also appears, although it seems to be of a more minor point, that Miss Physsas, because of the late arrival of witnesses for the Appellant, did not have the opportunity to introduce herself to those witnesses and whilst that of itself might not be significant, it appears to be part of an unfortunate process of the particular hearing, of which the judge seems to have allowed that to happen.
7. It is clear that the judge reached trenchant adverse credibility findings for a number of reasons and at this stage I do not consider whether or not those adverse findings really bear examination. What is complained of at its heart is that the hearing was not a fair one with a proper opportunity to take instructions and deal with evidence arising. Whether or not the outcome of those matters being dealt with as Miss Physsas sought would have made a difference to the hearing, I express absolutely no view.
8. It is of concern that the judge's reasoning also in dealing with witnesses who gave evidence, is really so thin. For example, the judge at paragraph 30(h) says:

"The evidence of the witness Mr Tudafor and Mr Hossain was lamentable in its quality, to such an extent that no weight can be attached on it for the reasons set out above. That the Appellant chose to call such witnesses shows in my judgement a wish on his part to bolster a weak claim by dubious evidence."

9. The difficulty is that one cannot discern in what respect the reason or what were the reasons set out which the judge felt properly explained the finding rejecting the totality of the evidence of two witnesses who had provided witness statements and/or rejecting the Appellant's claim.
10. It is unfortunate that this should have happened but I am fully satisfied that the judge's refusal to provide Miss Physsas with time to take instructions and to properly present the appeal let alone, even if it is not significant, not to show her documents he was receiving from the Presenting Officer, Mr Bassi, demonstrated procedural unfairness. On that basis alone I would have found the Original Tribunal made a material error of law and set the decision aside.
11. The judge has not seen the criticisms made of his general conduct nor has he seen what it is said gave the appearance of bias. I have considered whether or not it was necessary for the judge to see those remarks and make comments. However because of the point made in paragraph 8 above the lack of adequate and sufficient reasons means the decision can not stand and will have to be remade.
12. For my purposes today it is unnecessary to reach a conclusion on whether there was the appearance of bias and whatever views I might have do not necessarily need to do so.
13. The appeal is allowed to the extent that the matter is remitted to the First-tier Tribunal to be made by a First-tier Tribunal Judge other than Judge J D L Edwards nor Judge P J G White.

### **Directions**

- (1) Time estimate: 2 hours
- (2) Bengali interpreter
- (3) Any further statements or documents relied upon by either Appellant or Respondent to be served 21 days before the further hearing unless further directions at a CMR are given.
- (4) Please relist if possible with reference to Miss Physsas's availability : 0207 406 7552.

Signed

Deputy Upper Tribunal Judge Davey

9 May 2015