



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

Appeal Number: IA/00196/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 21 December 2018**

**Decision & Reasons
Promulgated
On 14 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**MUHAMMAD [S]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr [S]

For the Respondent: Mr Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh. He was born on 5 March 1989.
2. The appellant appealed against the respondent's decision dated 30 June 2017 to refuse him leave to remain.
3. Judge Traynor (the judge) dismissed the appeal for reasons he set out in a decision promulgated on 4 September 2018.

4. The grounds claim the judge erred because of a procedural irregularity leading to unfairness. That was because the appellant's solicitors Thamina Solicitors faxed a letter to the Tribunal at 14:18 on 11 June 2018 enclosing a letter from them and a "statement of fitness for work". Their letter said inter alia:

"We have been acting as a representative of the appellant. Our client has an outstanding appeal, which is listed for hearing on 12 June 2018 at IAC Taylor House. The appellant Mr [S] has instructed us that he is suffering from diarrhoea and vomiting and he is currently very unwell. As a result, he is now unable to attend the hearing on 12 June 2018 at IAC Taylor House. We have attached herewith a 'statement of fitness for work' letter for your kind consideration.

In all fairness it should be recognised that this is not the appellant fault as he have tried his level best to attend the hearing. In the interest of fairness therefore, we would impress upon the Tribunal to accede to his requests so as to grant an adjournment, as this appeal is very important for him.

We thank you in advance for your cooperation and look forward to hearing from you in due course".

5. It appeared the facts had not been placed before the judge as it was not mentioned in his decision.
6. In a decision dated 17 October 2018 Judge Lambert granted permission. She said inter alia as follows:

"3. The grounds take issue with the judge's decision to proceed with the hearing in the absence of the appellant, which is fully reasoned at paragraph 12. The contention is that the judge failed to take into account the fact the Tribunal had the day before the hearing been provided by fax with an adjournment application accompanied by a medical FIT note for the appellant. While there is no record on file of this having been received and the medical evidence does not in any event specifically address the appellant's ability to attend the hearing, there may be a procedural error amounting to an error of law in that the judge was not able to consider the adjournment request".

7. The Rule 24 response was dated 27 November 2018. The respondent said that the judge proceeded to hear the appeal in the absence of the appellant and his representatives in the belief that they had made no contact with the Tribunal. It goes on to say that if I find that an adjournment request was received prior to the hearing which was not put before the judge then I should list a fresh oral hearing.

Conclusion on Error of law

8. Through no fault of his own, the judge was unaware of an application for an adjournment such that the judge materially erred in determining the appeal.

Notice of Decision

9. The judge's decision is set aside in its entirety. The appeal is remitted to the First-tier for a de novo hearing.

No anonymity direction is made.

Signed

Date 30 January 2019

Deputy Upper Tribunal Judge Peart