



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

Appeal Number: PA050522016

THE IMMIGRATION ACTS

**Heard at Field House
On 3 May 2017**

**Decision & Reasons Promulgated
On 22 May 2017**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**M R M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Lagunju of Counsel instructed by Howe & Co Solicitors

For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Fowell promulgated on 12 December 2016 dismissing his appeal against the decision of the Secretary of State to refuse his asylum claim.
2. The applicant is a citizen of Bangladesh and claims that he was subjected to ill-treatment in detention on account of his political activities and that if he returns to Bangladesh he will face further persecution on that basis and thus that removing him would be in breach of the United Kingdom's

obligations under the Refugee Convention, Articles 2 and 3 of the European Convention on Human Rights.

3. In this case the proceedings had previously been adjourned in order for a medical report to be obtained from the Medical Foundation. It was on that basis that it had been adjourned from 11 August until Monday 5 December 2016. Before that the appellant's solicitors had been informed by the Medical Foundation that they would be able to produce the report by 3 December 2016 and thus it would be available for the hearing.
4. On 24 November 2016 the Medical Foundation, without any apparent reason, wrote to the appellant's solicitors stating that they would not now be able to produce it and the revised target date would be 16 January 2017. The appellant's solicitors quite rightly wrote to the Tribunal Service on 24 November 2016 explaining the situation and asking for an adjournment which was refused on the papers. The application was renewed before Judge Fowell who refused the application. I note that despite the assurance that it would be available on 16 January 2017 the report does not appear to have been made available until a further two months after this date. The judge dismissed the appeal substantively, concluding that although the appellant had suffered some injuries in detention he was not satisfied that the appellant would now be at risk on return nor was he satisfied, if there were any risk it would not be possible for the appellant to relocate within Bangladesh where he would not be at risk.
5. The appellant sought permission to appeal on two principal grounds. First that the judge had erred in failing to adjourn the hearing and that he had failed properly to apply the correct test as set out in Nwagwe (adjournment: fairness) [2014] UKUT 00418. The second principal ground which is set out in grounds 2 to 3 is that in essence the judge failed to make proper findings of fact and having made some findings of fact failed properly to apply the law to the circumstances, in particular failing properly to address the issues of sufficiency of protection and/or internal relocation. Permission to appeal was granted by First-tier Tribunal Judge Hodgkinson on 16 February 2017. The Secretary of State has also responded by way of a letter pursuant to Rule 24.
6. Ms Lagunju submitted that the judge's approach to the medical report was incorrect in that the improper test had been applied and that there had been a procedural unfairness leading to an error of law. She submitted also that the judge's findings of fact were inconsistent and were insufficient in particular with regards to the lack of specificity as to how the appellant had or had even accepted this had been ill-treated, whether this was in detention and also had failed properly to address whether the appellant had been involved with politics and in what way. She submitted further that the judge had in failing to make proper findings of fact rendered unlawful the findings with respect as to whether there was a risk on return and also in addressing the issues of sufficiency of protection and also whether internal relocation would be viable.

7. Mr Wilding accepted that the test as set out by the judge at paragraph 10 was perhaps incorrect but that in this case there was no procedural unfairness given the quite clear inadequacies of the medical report to which he drew my attention in some detail. He submitted also that in any event the judge had reached adequate findings of fact and had reached a decision which was sustainable and adequately reasoned.
8. I am satisfied that the judge has at [10] failed properly to set out the test applicable as to deciding whether a matter should be adjourned or not. Further the judge appears not to have taken into account the correct factors in assessing whether this was required by fairness or not and appears simply to have considered only the fact that nothing had changed since the application made on 20 November was a reason for granting an adjournment. There is no indication that the proper test set out in the Rules was applied.
9. The question then arises as to whether that error is capable of affecting the outcome. I conclude and not without considerable hesitation that the error was material. The judge did accept that injuries had occurred. As Ms Lagunju submitted, there is some confusion as to what he had actually found. There is of course an inherent difficulty in concluding that once there has been a procedural error the error being that the applicant has not had a fair hearing that the result would inevitably have been the same and I do not conclude that that was so.
10. The actions of the Medical Foundation raise concern. They clearly told the appellant and his solicitors that a report would be available having seen the appellant on three separate occasions in August 2016 yet with no explanation and apparently in the full knowledge that an adjournment had been obtained to get this report, that they would not be able to provide it. Having then said that it would be available by 16 January 2017 it does not appear to have been produced until 23 March 2017 despite having been signed on 1 February. No one is assisted by these kind of unexplained delays least of all the person about whom the report is concerned. Nonetheless, the error is material.
11. In the circumstances I set aside the decision of the First-tier Tribunal as the error was a procedural one and it is necessary for the matter to be remitted to the First-tier Tribunal for a fresh decision on all issues.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside. I remit the decision to the First-tier Tribunal for a fresh decision on all issues; none of the findings of the First-tier Tribunal are preserved.
2. I maintain the anonymity order made by the First-Tier Tribunal

Signed

Date 15 May 2017

A handwritten signature in black ink, appearing to read "Jeremy Rintoul". The signature is fluid and cursive, with a prominent initial "J" and "R".

Upper Tribunal Judge Rintoul