



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

Appeal Number: IA/00400/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 March 2018**

**Decision & Reasons  
Promulgated  
On 5 April 2018**

**Before**

**DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL**

**Between**

**MR ISTIAK HOSSAIN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Mr P Nath, Home Office Presenting Officer

**DECISION AND REASONS**

1. In a decision sent on 12 May 2017 Judge Mitchell of the First-tier Tribunal (FtT) dismissed the appellant's appeal. At the hearing the appellant did not attend nor did anyone on his behalf. The judge noted that upon the court administration contacting his solicitors they were told the representatives had requested on 13 March 2017 for the case to be heard on the papers. The judge noted that "[e]nquiries of the court administration showed that no such notice had been received. I therefore

considered that the matter should proceed as listed by way of an oral hearing as originally requested”.

2. The challenge brought against the judge’s decision is that by proceeding to deal with the case at a hearing, the judge acted unfairly. There was no appearance by or on behalf of the appellant for the error of law hearing before me and no explanation for that. In such circumstances I considered it just to proceed in the absence of one of the parties.
3. From the file, it does in fact appear that there is a facsimile transmission of 13<sup>th</sup> March 2017 from the appellant's solicitors requesting that the appeal be considered on the papers and that either it had not reached the judge’s file or it was overlooked.
4. Nevertheless, I see no error in the judge proceeding as he did. The appellant had paid a fee for an oral hearing. There had already been an adjournment. The fact that the hearing went ahead even though the appellant's solicitors had sent a request that it be dealt with on the papers in no way disadvantaged the appellant. By electing against an oral hearing the appellant was denying himself the opportunity to give evidence in support of his appeal and to make oral submissions in person or through his solicitors. He cannot therefore complain that at the hearing the judge received submissions from one party only. There was no procedural unfairness.
5. Further, this was an appeal in which prior to the judge’s deliberations the appellant had not seen fit (either in the facsimile transmission or otherwise) to provide any documents to the FtT, despite being legally represented throughout the whole of the proceedings. His appeal grounds were cursory to say the least. As the judge noted quite correctly, the burden of proof lay on the appellant to show upon the balance of probabilities that he met the requirements of the Immigration Rules or that the decision appealed against breached his human rights. The lack of evidence, coupled with the appellant's choice not to attend an oral hearing and seek a decision on the papers instead, meant that he singularly failed to discharge the burden of proof.
6. For the above reasons I conclude that the FtT did not materially err in law and the judge’s decision must stand.
7. No anonymity direction is made.

Signed

Date: 3 April 2018



Dr H H Storey Judge of the Upper Tribunal