



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/02324/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 12th July 2018**

**Decision & Reasons Promulgated
On 19th July 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

**MR ALI HUSSAIN
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Hussain, Solicitor, instructed by Raiyad Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh whose appeal was dismissed by First-tier Tribunal Judge Traynor in a decision promulgated on 2nd May 2018.
2. Grounds of application were lodged, it being said that the judge had stated he believed the Appellant had attended the Tribunal and disappeared without telling anyone that he was leaving. The judge then proceeded to make a decision based on his understanding that the Appellant was at the hearing centre and that neither he nor his solicitors had given any explanation for his leaving. This was simply untrue and was due to a mistake. The Appellant was too ill to attend the hearing. A fax had been sent explaining the position. Indeed, the Appellant had attended at the solicitors' office in the morning and stated he was too ill to attend the Tribunal and he was sent to a GP. The Grounds surmise that some other

Appellant with the surname "Hussain" must have been mistakenly marked as present on the court list for the Appellant. This would explain why even after an extensive search the Appellant was not found to be present at the Tribunal. Permission to appeal was requested and duly granted by First-tier Tribunal Judge Saffer. Thus, the matter came before me on the above date.

3. Mr Hussain asked that the decision be set aside based on what was said in the Grounds. It was unfortunate that the judge had come to the view that the Appellant had been present at the Tribunal when plainly he had not been.
4. For the Home Office it was said there was no objection to the decision being set aside and remitted to the First-tier Tribunal.

Conclusions

5. Unfortunately, through no fault of the judge, there seems to have been a mix-up in this case. The judge noted at paragraph 40 of his decision that the Appellant was present at the hearing centre but left without explanation which was damaging to his credibility. In fact, it appears that the Appellant never did attend at the Tribunal and was too ill to attend and this was not disputed by the Home Office.
6. It is therefore plain enough that the Appellant has not had a fair hearing. The judge assumed he was present at the hearing when he was not and therefore the credibility findings are unsafe.
7. The decision of the First-tier Tribunal is therefore set aside because there is an error in law, namely that the judge assumed that the Appellant had declined to attend the hearing, although he had attended the hearing centre and founded very much on that failure by the Appellant.
8. The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and under Practice Statement 7.2 the nature and extent of the 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.

Notice of Decision

9. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
10. I set aside the decision.
11. I remit the appeal to the First-tier Tribunal.
12. No anonymity order is made.

Signed *JG Macdonald*

Date 18th July 2018

Deputy Upper Tribunal Judge J G Macdonald