



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

Appeal Number: HU/10699/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 12 June 2019**

**Decision & Reasons Promulgated
On 10 July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**MR MD ALI [J]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M West, Counsel, instructed by City Heights Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant, Mr Md Ali [J], in respect of the Decision and Reasons of First-tier Tribunal Judge Dineen, promulgated on 7 March 2019 in which the appellant's human rights claim was dismissed.
2. The grounds for permission argue two grounds. Firstly, that the First-tier Tribunal Judge was wrong to refuse an adjournment pursued on the basis that the appellant was ill and unable to attend the hearing, and secondly, that the First-tier Tribunal Judge failed to consider evidence in support of the appellant's case that he was a member of the BNP, which was material to his human rights claim.

3. Permission to appeal was granted by First-tier Tribunal Judge Landes on 3 May 2019.
4. I heard full submissions from Mr West this morning in support of the grounds of appeal, and in response Mr Tarlow did not oppose the application.
5. I have decided that there is a material error of law in the determination of First-tier Tribunal Judge Dineen.
6. Both grounds of appeal have been made out. I am satisfied that the First-tier Tribunal Judge had before him more than adequate documents to support the appellant's claim that on the day before the hearing he was suffering from breathlessness and depression and had attended hospital for treatment [12]. The First Tier Tribunal Judge focussed on the absence of evidence to explain why the appellant was not fit to attend. There was no proper consideration by the First-tier Tribunal Judge of the issue of fairness and the decision was inadequately reasoned. In particular there was no consideration of whether or not the appellant would be deprived of a right to a fair hearing (**Nwaigwe** (adjournment: fairness) [2014] UKUT 00418 (IAC)).
7. In addition, I am satisfied that the second ground is made out. The First-tier Tribunal Judge decided to proceed in the absence of the appellant. The First-tier Tribunal Judge then failed to consider a material issue, namely the appellant's membership of the BNP, which could have impacted on the decision made. This of course would have been a matter on which the appellant could have given oral evidence.
8. I have decided to set aside the Decision and Reasons and the matter will be remitted to Taylor House for hearing do novo, excluding First-tier Tribunal Judge Dineen.

Notice of Decision

9. There is a material error in law and decision is set aside. The matter will be heard afresh before the Tribunal at Taylor House.

No anonymity direction is made.

Signed

Date 17.6.2019

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award as the matter will be reheard.

Signed

Date 17.6.2019

Deputy Upper Tribunal Judge G A Black