



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000799
First-tier Tribunal No:
HU/51634/2021
IA/05534/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22 June 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MR MD SHAKAWAT HUSSAIN
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Appearances:

For the Appellant: Mr I Khan, Counsel
For the Respondent: Mr E Terrell, Senior Presenting Officer

Heard at Field House on 7 June 2023
Prepared at Field House on 7 June 2023

DECISION AND REASONS

1. The Appellant, a national of Bangladesh, appealed against the Respondent's decision to refuse his human rights based claim. First-tier Tribunal Judge Scott-Baker dismissed the appeal on 13 December 2022. Permission to appeal was refused in the First-tier Tribunal but when the

matter came before Upper Tribunal Judge Kebede, permission was granted.

In the grant of permission to appeal Judge Kebede said as follows

“The grounds refer to a second appeal bundle containing a 2022 NHS psychiatric assessment which it is asserted that the judge failed to consider. I cannot locate any such report myself and the grounds are not clear as to the date of the report or the contents of that second bundle. However given that the judge at [43] specifically stated that she found it surprising that there was no report from the NHS Trust, it seems to me that the interests of fairness require that further consideration be given to the matter. On that basis alone I grant permission. However, it is for the Appellant to show that the report would have made a material difference to the outcome of the appeal.

2. A copy of the second bundle which the judge did not have was provided to me and within that bundle was an NHS based report concerning the Appellant’s mental health and repeating essentially the history he had given and documentation, which was copied to Dr S Ong of an NHS based surgery, giving particulars and a copy of a safety plan prepared for the Appellant through an operation called Greenwich Time to Talk, NHS based.
3. The parties agreed between themselves that the appropriate course would be to send the matter back to the First-tier Tribunal and for the appeal to be reheard de novo.
4. I agree with the position adopted by the Appellant and Respondent but particularly by the position which is left open at the moment in terms of the significance of the medical evidence. Accordingly I concluded that the judge through a matter of procedural unfairness had not had before her the relevant documentation to make a proper decision and without comment upon the merits I concluded that the appropriate course was for the matter to be remade in the First-tier Tribunal.

DECISION

The First tier tribunal made a material error of law. The appeal is allowed to the extent that the remaking of the appeal shall take place in the First-tier

Tribunal but not before First-tier Tribunal Judge Scott-Baker. No findings of fact to stand.

ANONYMITY ORDER

No anonymity direction is made.

A handwritten signature in black ink, appearing to read 'T. Davey', written in a cursive style.

Signed

Date

Deputy Upper Tribunal Judge Davey