



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

Appeal Number: PA012342017

THE IMMIGRATION ACTS

**Heard at Field House
On 12 June 2017**

**Decision & Reasons
Promulgated
On 27 June 2017**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**KHALED AHMED (AKA SHAMIM MD SHAMIM)
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Unrepresented

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant's case is that he is Mr Khaled Ahmed, a citizen of Bangladesh and his date of birth is 17 January 1979. It is the Respondent's case that he is Shamim Md Shamim, a citizen of Bangladesh with a date of birth of 8 January 1991.
2. The Appellant made an application for asylum which was refused by the Secretary of State on 25 January 2017 and he appealed against that

decision. His appeal was dismissed by Judge of the First-tier Tribunal Fox, in a decision promulgated on 30 March 2017, following a hearing on 1 March 2017. The judge rejected the Appellant's account in its entirety. The Appellant was granted permission to appeal by Judge of the First-tier Tribunal Keane, in a decision of 28 April 2017.

3. At the start of the hearing before Judge Fox, the Appellant made an application for an adjournment to obtain a medical report. The judge refused the application, engaging with the issue at paragraph 18, and concluding that the Tribunal could assess the Appellant's credibility independently, noting that despite two previous applications for adjournments, this was the first occasion that the Appellant raised his wish to obtain medical evidence.
4. The Appellant is not represented and the grounds raise a number of issues. The is that the judge erred in refusing to adjourn the case, in the light of a Rule 35 report of 7 April 2017, which according to the Appellant, supports his evidence of mistreatment. Had the judge had sight of this, he would have adjourned the case. The refusal to adjourn resulted in unfairness.
5. Mr Bramble conceded at the hearing before me that there was a material error of law and he helpfully referred me to the Appellant's witness statement of 1 March 2017. This witness statement is dated the day of the hearing before the First-tier Tribunal and was before the judge. It gives an account of having been shot and cut with a knife. There is no reference in the decision of the First-tier Tribunal to this part of the Appellant's evidence. The judge did not engage with it. Had he done so, he may have decided the adjournment application differently; notwithstanding, that he did not have before him the Rule 35 report.
6. The Rule 35 report, which was not before the First-tier Tribunal, is capable of corroborating the Appellant's evidence. The judge clearly did not have the benefit of the Rule 35 report; however, in the light of the contents of it, I agree with Mr Bramble that a procedural irregularity arises resulting in unfairness.
7. I communicated the decision orally to the parties at the hearing and the decision of the Judge of the First-tier Tribunal to dismiss the Appellant's appeal is set aside and the appeal remitted to the First-tier Tribunal for a rehearing. None of the findings of Judge of the First-tier Tribunal Fox can be salvaged.
8. No anonymity direction is made.

Signed

Joanna McWilliam

Date 21 June 2017

Upper Tribunal Judge McWilliam