



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

Appeal Number: IA/22601/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 7<sup>th</sup> December, 2017**

**Corrected, signed and sent  
to Promulgation on 12<sup>th</sup> January, 2018**

**Decision & Reasons  
Promulgated**

**On 15<sup>th</sup> January 2018**

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**MD TOWHIDUL ISLAM  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

*For the Appellant: Mr Maqsood*

*For the Respondent: Mr T Melvin, a Senior Home Office Presenting Officer*

**REASONS FOR FINDING AN ERROR OF LAW**

1. The appellant is a citizen of Bangladesh born on 4<sup>th</sup> April 1987. He entered the United Kingdom on 23<sup>rd</sup> March, 2008 with limited leave to enter as a student valid until 30<sup>th</sup> June 2011. He was subsequently granted an extension of stay in the same category until 30<sup>th</sup> November 2014. Two days before that leave was due to expire he made application for leave to remain in the United Kingdom on human rights grounds on the basis of his

Article 8 rights. That application was refused by the respondent on 22<sup>nd</sup> May 2015 as a result of which the appellant appealed to the First-tier Tribunal.

2. His appeal was listed for hearing on 26<sup>th</sup> September 2016, at Taylor House and he wrote to the Tribunal on 15<sup>th</sup> requesting an adjournment following an accident which took place on 3<sup>rd</sup> September 2016, in which his right leg was injured. He included with that letter, a report prepared by Professor S Lingam of Harley Street Medical Express Clinic dated 13<sup>th</sup> September 2016, confirming that the appellant's right leg was plastered and bandaged, and it was likely that his leg had been fractured. The letter enclosed other evidence as well, as a result of it consideration the matter was adjourned, and the appellant was notified.
3. He was also informed that he must in future provide medical evidence of his fitness to attend court on any further occasion if he required a further adjournment. The appeal was relisted for hearing on 6<sup>th</sup> March 2016. On 15<sup>th</sup> February 2016, he wrote asking for a further adjournment due to a worsening of his health condition. He stated that he was bedridden and that doctors were considering performing a further operation on 27<sup>th</sup> February. He was unable to stand and had been unable to prepare his witness statement and appeal bundle. He did however provide some evidence, including a letter of 13<sup>th</sup> February from Professor Lingam informing the appellant that he should request an adjournment because of his worsening health condition and the fact that he needed a leg operation by the end of February. There was a letter also from Professor Lingam addressed to whom it may concern, stating that the appellant continued to feel unwell and that it had been decided to "go for a bone operation on Monday 27<sup>th</sup> February, 2017.
4. The request for an adjournment was refused. The appellant wrote to the Tribunal on 1<sup>st</sup> March with an urgent adjournment request stating he had undergone the operation on 27<sup>th</sup> February and was in severe pain and bedridden. He enclosed a further letter from Professor Lingam dated 1<sup>st</sup> March 2017, confirming that the appellant had had an operation on his leg and that normally a patient would need intensive rest for at least five or six months. The request for an adjournment was refused on 3<sup>rd</sup> March 2017, by Judge Shaerf who was concerned that there was no evidence from the surgeon or hospital where the operation was performed. As a result, directions were sent to the appellant. Unfortunately, those directions were not sent until very late in the day and I am told were not received by the appellant until the day of the hearing.
5. The judge decided to proceed to hear the appeal in the absence of the appellant and in doing so **made a material error of law**. It was clear from the evidence before the judge that the appellant was in need of some form of operation on his leg and there was a letter from a professor, indicating that the appellant was to undergo a bone operation on Monday 27<sup>th</sup> February. The same professor indicated that after this type of surgery

normally a patient would need intensive rest for five or six months. I do not suppose for one minute the professor meant that for five or six months the appellant needed to remain in bed and would not be fit enough to attend court, but clearly the closer to date of the operation the less mobile the appellant could be expected to be.

6. I believe that on Monday 6<sup>th</sup> March it should have been blatantly apparent to the judge (assuming he had read all the correspondence that I have referred to) that it was likely that the appellant would be unable to attend the hearing so soon after an operation on a bone in his leg and he should have adjourned the matter.
7. **I therefore set aside the determination of First-tier Tribunal Judge Spicer.** The matter will be remitted to the First-tier Tribunal for a hearing before a judge other than Judge Spicer. I would have heard the appeal myself today, but for the fact that no witnesses have appeared. There will be four witnesses and I suggest that three hours should be allowed for the hearing of the appeal. A Bengali interpreter should be available.

No anonymity direction is made.

***Richard Chalkley***  
**Upper Tribunal Judge Chalkley**