



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

Appeal Number: PA/00541/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 14 June 2019**

**Decision & Reasons Promulgated
On 03 July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

**MR ISTHIAK HUSSAIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Mustafa, Counsel.

For the Respondent: Ms S Cunha, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh who made an application for international protection. It was refused and following a hearing, and in a decision promulgated on 18 March 2019, Judge of the First-tier Tribunal S J Clarke dismissed the Appellant's appeal.
2. He sought permission to appeal. It was initially refused but a renewed application came before Upper Tribunal Judge Chalkley on 22 May 2019. He granted it on the following basis: -

"I believe that the first 9 paragraphs of the unnecessarily long application fail to identify any properly arguable error of law on the part of the First Tier Tribunal Judge, but I am concerned that the judge may have erred in what he said about the Rule 35 report and on that and subsequent issues, I grant permission."

3. Thus, the appeal came before me today.
4. At the outset Mr Mustafa accepted that at the core of his application was the issue of the Rule 35 report which was not before the Judge at the First-tier Tribunal. The impact of that not being considered was such, alongside the Judge's approach to Section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 was to render his credibility findings unsafe. He accepted that the Appellant had been represented at the hearing, that there was no application to adjourn and that it was only after the hearing that the Rule 35 report had been made available. It ought, he submitted, to have been considered. He wished me to consider an application under Rule 15 (2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 in relation to the Rule 35 report and other material.
5. Ms Cunha urged me to accept that the issue of the Rule 15 application only came into play were I to find that the Judge's decision contained a material error of law. She submitted that it did not. This is an appeal that has gone through a case management review hearing, there was opportunity at the substantive hearing to seek an adjournment which was not taken, and the Judge was entitled to come to the conclusion that he did in paragraph 11 of his decision.
6. I find that the Judge has not materially erred as asserted by Mr Mustafa. Paragraph 11 of his decision sets out his approach to the issue in relation to the medical report. It states: -

"11. The Appellant claims he was injured in the leg, and fingers and a letter from a hospital has been provided. However, in the absence of any medical report from the UK confirming there is a scar from the claimed deep cut in his thigh I place little weight upon it. The Appellant said he thought the Rule 35 report was submitted after his asylum interview to try and explain why he failed to provide it in his own bundle, but I do not accept this explanation because if it is not in the Respondent's bundle it could have been provided in a supplementary Appellant's bundle and no application was raised at the start of the hearing for the report."

7. The Judge was faced with no application to adjourn. He approached the issue of the absence of the Rule 35 report correctly, considering the submission by the Appellant for its absence. He was entitled to proceed on the basis that he did.
8. As Mr Mustafa accepted, if I were to find that the Judge had not materially erred in his approach to the Rule 35 report the appeal would fail. That is

the position. The Appellant's remedy, given that there is no material error of law, is to make further submissions to the Home Office supported by any fresh evidence.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

No anonymity direction is made.

Signed

Date: 1 July 2019

Deputy Upper Tribunal Judge Appleyard