



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

Appeal Number: PA/08053/2018

THE IMMIGRATION ACTS

Heard at Field House

On 12 February 2019

**Decision & Reasons
Promulgated**

On 04 March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**MR A M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Ali, Sohaib Fatimi Solicitors

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant, born on 1 February 1993 is a citizen of Afghanistan. In a decision promulgated on 7 December 2018 Judge of the First-tier Tribunal Traynor dismissed the appellant's protection claim on all grounds.
2. Mr Jarvis conceded at the error of law hearing, properly in my view, that the decision was an infected material of error not least due to the fact that at several instances in the decision, including at paragraph [48], the judge

noted that there was no new evidence and specifically no statement from the appellant's brother Mr T H in the past five years, nor, the judge found, had it been explained why he had not provided 'any formal written statement'. However, the appellant's bundle, B20 to B22 contained a witness statement from the appellant's brother, Mr T H dated 7 August 2017, which I accept, and it was not disputed, was before the First-tier Tribunal.

3. It is evident therefore that the judge had failed to take into consideration material evidence (his brother having been successful in his asylum appeal in 2013). Whilst such may not ultimately affect the outcome of the appellant's appeal and Mr Jarvis confirmed that the respondent continues to rely on the reasons for refusal of the appellant's fresh claim, I cannot say with any certainty that the judge's decision would have necessarily been the same, had he properly taken into consideration all the evidence before him.
4. In light of the respondent's concession, I need not consider the remaining grounds of appeal (although I note in passing that these have considerably less force and the fact that the First-tier Tribunal's decision was not issued for just under four months, without establishing a nexus between that delay and any claimed error, is in itself, unremarkable and not a reason to set aside the decision (see including SS (Sri Lanka) v Secretary of State for the Home Department [2018] EWCA Civ 1391)).
5. The decision of the First-tier Tribunal contains an error of law such that it must be set aside. Due to the nature and extent of the fact-finding required I remit the appeal to the First-tier Tribunal, Taylor, other than Judge Traynor or Judge Mailer.

Signed

Date: 1 March 2019

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

No fee was paid or payable so no fee award is made.

Signed

Date: 1 March 2019

Deputy Upper Tribunal Judge Hutchinson