



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

Appeal Number: PA/07749/2016

THE IMMIGRATION ACTS

Heard at Field House

On 22nd March 2018

**Decision & Reasons
Promulgated
On 12th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**AMANULLAH [N]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr David Jones, Counsel, instructed by Sutovic & Hartigan
For the Respondent: Mr E Tufan, Home Office Presenting Officer

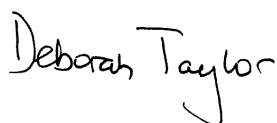
DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Hussain made following a hearing at Hatton Cross on 25th January 2017.
2. The background to this case is that the appellant, a citizen of Afghanistan, born on 1st August 1998, arrived in the UK on 22nd September 2014 and claimed asylum. His application was refused on 19th January 2015 but he was granted discretionary leave on the basis that he was an unaccompanied minor. His appeal against the refusal was dismissed by Judge Gillespie on 30th June 2015. He made a further application for leave

on 1st February 2016 and was refused again. It was this refusal which was the subject of the appeal before Judge Hussain.

3. Judge Gillespie had broadly accepted that the appellant had told the truth about the circumstances which led him to leave Afghanistan in that he accepted that the appellant was the second son of a moneychanger and that a series of kidnappings had caused his family to fear that a threat would be made against the appellant. Judge Gillespie however did not accept that the appellant would be threatened on return to Afghanistan.
4. Judge Hussain recorded that the appellant had accepted that he had no new specific documents to support his claim or to challenge the findings of Judge Gillespie.
5. The appellant sought permission to appeal inter alia on the grounds that he had in fact provided further evidence which had not been considered by Judge Hussain. Permission was refused by Judge Ford on 4th May 2017 and again refused in the Upper Tribunal by Judge Rimington on 12th June 2017. The appellant then sought permission to apply for judicial review challenging the decision of Judge Rimington made on 12th June 2017.
6. Permission was granted by Her Honour Judge Walden-Smith sitting as a Judge of the High Court on 3rd October 2017, and on 7th December 2017 permission to appeal was granted by the Vice President of the Upper Tribunal Mr C M G Ockelton.
7. On 7th February 2018 the respondent wrote to the Tribunal stating that they were without documentation and therefore were unable to agree that there was an error of law which rendered the determination unsustainable. However, at the hearing Mr Tufan accepted that the proper course in this case was that the appeal should be remitted to be heard by a First-tier Judge other than Judge Hussain.
8. Judge Hussain's decision is set aside. He erred in law in failing to take into account new evidence which could have been sufficient to make out the appellant's case.
9. In view of the lengthy history of this matter Mr Jones requested that when the appeal is re-listed at Taylor House his availability should be taken into account. There will have to be liaison with Sutovic & Hartigan Solicitors in any event because the appellant has a witness from Germany whom he wishes to call and the solicitors will therefore need to be given sufficient notice in order to organise his travel. A Dari interpreter will be needed.

No anonymity direction is made.



Signed

Date 7 April 2018

Deputy Upper Tribunal Judge Taylor