



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

Appeal Number: PA/07173/2018

THE IMMIGRATION ACTS

Heard at Field House

On 25th January 2019

**Decision & Reasons
Promulgated
On 01st March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

**M E H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Bahja, Counsel, instructed by Duncan Lewis & Co
For the Respondent: Ms L Kenny, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Somalia whose date of birth is recorded as 20th December 1984. He appeals the decision of First-tier Tribunal Judge Zahed dated 23rd August 2018.
2. This appeal comes before me with the permission of Upper Tribunal Judge Perkins who granted that permission on 12th December 2018.
3. There are a number of grounds. It is not altogether clear which grounds were permitted to be argued and which were not. What is clear, however,

is that permission was granted on the basis that there was said to have been no bundle of documents from the Appellant by the judge when in fact there was. The paragraph in question is paragraph 8 in which the judge said in terms, “The documents before me at the hearing comprise the Home Office bundle containing the documents required under Rule 13(1) of the Procedure Rules. There was no bundle of documents submitted by the Appellant”.

4. It is not entirely clear why there were no documents before the judge. There is a large bundle of documents dated 27th June 2018 which were sent to the Tribunal by recorded delivery. I checked on “Track and Trace” in open court before the parties and found that the items were signed for at the Tribunal on 28th June 2018.
5. It may be that the file was simply wrongly allocated or filed or for whatever reason did not reach the judge, but the difficulty is that the Appellant has a right to know that the decision reached was based upon all of the evidence. When the judge says that there was no bundle when indeed there was, and it was a bundle of some substance, then the Appellant cannot be satisfied that he has been dealt with fairly.
6. It is right to observe that much of the bundle contains material which forms the Home Office bundle, but there is other material evidence also. The bundle ran to over one hundred pages.
7. In the circumstances the decision cannot stand. I set it aside. I then have to decide whether to remit to the First-tier Tribunal or remake the decision. Although Ms Kenny invited me to keep this matter in the Upper Tribunal it seems to me that the decision is so fatally flawed that the hearing will have to start again with no preserved findings before a judge other than Judge Zahed.
8. This matter should be listed at Taylor House.
9. No interpreter is required.

Notice of Decision

The appeal to the Upper Tribunal is allowed. The matter is remitted to the First-tier Tribunal to be heard afresh.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant

and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 27 February 2019

A handwritten signature in black ink, appearing to be 'JZ', written in a cursive style.

Deputy Upper Tribunal Judge Zucker