



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

Appeal Number: HU/04192/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18<sup>th</sup> December 2018**

**Decision & Reasons  
Promulgated  
On 17<sup>th</sup> January 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

**MR MOHAMMED SHAHJALAL  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr T Chowdhury (Counsel)

For the Respondent: Ms A Everett, Home Office Presenting Officer

**DECISION AND REASONS  
EX TEMPORE JUDGMENT**

1. This is an application for permission to appeal which has been granted at the First-tier Tribunal by Judge Birrell on the basis that, as a result of a procedural irregularity, the Appellant did not attend his hearing.
2. Looking at the decision of the First-tier Tribunal dated 4<sup>th</sup> May 2018 and promulgated on 11<sup>th</sup> June 2018, it is quite clear that the judge was unaware of that correspondence or the fact that the Appellant was not in the country, and that that was the reason why he was not at the hearing.

The evidence in support of the application following the grant of permission establishes that the Appellant had written to the Tribunal on at least one occasion in October 2017, and followed that up by an email in May 2018, to the point that he was out of the country and unable to attend his hearing and requesting that the matter be adjourned to a different date. There is no copy of that correspondence on the court file.

3. Ms Everett has quite properly drawn to my attention that even had the letter been before the judge it would have been open to the Respondent to argue that nonetheless the hearing should have proceeded in his absence. However, given that the letter was not before the judge I cannot be sure that had he seen that correspondence that he would have reached the same conclusion on the basis of any such submission. In those circumstances I am satisfied that through no fault of the judge a procedural irregularity has occurred.
4. I find the Appellant has established that the decision reveals an error of law and, exercising my discretion, I set the decision aside and remit the appeal to the First-tier Tribunal for a de novo hearing.

**Notice of Decision**

The appeal is allowed.

No anonymity direction is made.

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Signed  
Deputy Upper Tribunal Judge Davidge

Date 08 January 2019

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award for the following reason, none is requested, and the appellant could have done more.

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Signed  
Deputy Upper Tribunal Judge Davidge

Date 08 January 2019