



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

Appeal Number: IA/26864/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5 March 2015**

**Determination Promulgated
On 6 March 2015**

Before

Upper Tribunal Judge Southern

Between

LEONARDO MARCIO SOARES

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None (Appellant appeared in person.)

For the Respondent: Mr L. Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. As it is common ground and agreed between the parties that the determination of the First-tier Tribunal Judge discloses an error of law such that his decision to dismiss the appeal cannot stand and that the appeal must be determined afresh by the First-tier Tribunal, it is necessary only briefly to identify the nature of that error and to confirm my agreement to that course.
2. The appellant appealed against a removal decision made by the respondent after she had refused a request to reconsider an earlier refusal to grant the appellant

leave to remain. In doing so he asked that the appeal be determined without a hearing on the basis of written representations made on his behalf.

3. That appeal came before First-tier Tribunal Judge Carroll on 11 November 2014 who said, at paragraph 6 of a brief determination, that the appellant had not submitted any evidence of ties established in the United Kingdom and nor had he provided any explanation why he and his family could not return to live in Brazil. Unfortunately, as is accepted by the respondent, the appellant had filed and served written evidence which, he argues, established what was required to succeed in the appeal but that material, although submitted to the Tribunal, was either not before the judge or, if it was, it was not taken into account.
4. In either event, this constitutes, at least, a procedural irregularity giving rise to unfairness such as to amount to an error of law. The effect of that is that the appellant has not had his case considered by the First-tier Tribunal at all. Therefore, the decision of Judge Carroll will be set aside and the appeal will be remitted to the First-tier Tribunal to be determined afresh by a different judge of that Tribunal.

Summary of decision

5. The First-tier Tribunal made an error of law and the decision of First-tier Tribunal Judge Carroll to dismiss the appeal, contained in a determination promulgated on 17 November 2014, is set aside.
6. The appeal to the Upper Tribunal is allowed to the extent that the appeal is remitted to the First-tier Tribunal to be determined afresh by a judge other than Judge Carroll.

Signed



Judge of the Upper Tribunal

Date: 5 March 2015