



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

Appeal Numbers: IA/20064/2013

THE IMMIGRATION ACTS

**Heard at Laganside Courts Centre, Belfast
on 14 April 2014**

**Determination
Promulgated
on 15 April 2014**

Before

The President, The Hon. Mr Justice McCloskey

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ROSS PATRICK McGILL

Respondent

Representation:

Appellant: Mrs M O'Brien, Senior Home Office Presenting Officer
Respondent: Mr McGuinness of John Fahy and Company Solicitors

DETERMINATION AND REASONS

1. By a decision dated 20th May 2013 made on behalf of the Secretary of State for the Home Department (the "*Secretary of State*"), the Appellant herein, the Respondent's application for a residence card under the Immigration (EEA) Regulations 2006 was refused. His application under paragraph 276 ADE/Article 8 ECHR was simultaneously refused. The

ensuing appeal to the First-tier Tribunal (the “FtT”) succeeded. In [9] and [10] of the determination, the Judge stated:

“[The Secretary of State’s representative] accepted that the Appellant meets the requirements of Appendix FM of the Immigration Rules and that the decision made breaches Article 8 of the Human Rights Convention. Upon that concession being made, [Appellant’s Counsel] indicated that he did not intend to pursue the appeal under the EEA Regulations

I allow the appeal under paragraph FM of the Immigration Rules

I allow the human rights appeal under Article 8 of the Human Rights Convention.”

2. In the Secretary of State’s application for permission to appeal to the Upper Tribunal, it was suggested that the passage quoted above betrayed an error of law, since the presenting officer –

“..... has indicated that the financial requirements of FM are not satisfied. The Judge has made no findings on this material aspect of Appendix FM and has, therefore, erred in law by stating that the Appellant has satisfied the Rules.”

I have noted the terms in which permission to appeal was granted. I consider that the grant of permission to appeal was inappropriate, since the grounds of appeal did not challenge, even obliquely, the concession unequivocally recorded by the Judge in [9]. The grounds demonstrably lacked merit and the application for permission should have been refused.

3. In the event, permission having been granted, the Respondent’s solicitors, properly in the circumstances, requested that the FtT Judge provide his notes of the hearing. This request was channelled through the Principal Resident Judge of the Upper Tribunal and elicited, commendably, a swift and co-operative response from the FtT Judge. As the typed transcript demonstrates, the Judge’s notes put the matter beyond dispute. This was followed by a letter dated 15th January 2014 from the Respondent’s solicitor to the Secretary of State’s representatives, enclosing a copy of the Judge’s letter and notes. This letter suggested, in terms, that the appeal be withdrawn and that the Respondent be granted leave to enter the United Kingdom.
4. The sequence of events thereafter is regrettable. Some three months later [today], this appeal was listed for hearing, in circumstances in which neither party’s representative had engaged in any further communication with each other. This surprising failure was compounded by a further, associated failure on the part of the Appellant’s solicitors to serve a notice under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No explanation for this unacceptable failure was provided. In

the event, the listing of this appeal for hearing entailed a pre-eminently avoidable waste of time, effort and cost.

5. The Appellant's presenting officer received the materials identified above for the first time in the course of the hearing. Copies were not provided to either the presenting officer or the Tribunal in advance. This failure is intolerable. Having considered the materials, the presenting officer, properly in my view, indicated that the appeal would not be pursued. At the invitation of the Tribunal, an application was made under Rule 17 for permission to withdraw the appeal. The Tribunal acceded to this application.

DECISION

6. The Appellant's application under Rule 17 for permission to withdraw the appeal is granted. The decision of the FtT is hereby affirmed.

Signed: *Seamus McCloskey*

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 14 April 2014