



IAC-FH-AR-V1

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

Appeal Number: IA/48728/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 31<sup>st</sup> October 2014**

**Decision and Reasons  
Promulgated  
On 5<sup>th</sup> November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

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

Appellant

**and**

**BHAVISH KUMAR SHIW-PURSAD**

Respondent

**Representation:**

For the Appellant: Mr R Megha, Home Office Presenting Officer  
For the Respondent: Miss R Petersen, Home Office Presenting Officer

**DECISION AND REASONS  
EXTEMPORE JUDGMENT**

1. The matter comes before me on grounds from the Secretary of State who complains that the decision of First-tier Tribunal Judge Prior promulgated on 19<sup>th</sup> August 2014 is vitiated by legal error in that when the judge

allowed the appeal to the limited extent that it was otherwise not in accordance with the law for failure to reveal the policy, the subject of the reasons for refusal letter, there was in fact no procedural unfairness which could have made any difference to the outcome of the consideration of the Appellant's application.

2. The judge at [17] noted that the exercise of discretion by the Respondent must be exercised with procedural fairness if it is to be exercised in accordance with the law. The judge further noted that the reasons for refusal set out matters apparently contained in her policy which were pertinent to the decision and which were not available to the Appellant, either in the preparation of his application, or in the appeal before the judge.
3. Mr Megha argued that the failure to provide the policy relied on demonstrated an absence of fairness in process which was sufficient to justify the conclusion of the judge.
4. Miss Petersen for the Respondent acknowledged that there was unfairness in the process adopted by the Respondent and indicated that whilst she did not have instructions to, and so was not in a position to withdraw the grounds of the application before me, she acknowledged that there was force in the fairness arguments raised as determinative by the judge and was unable to assist me with any detailed submission in support of the grounds challenging the decision.
5. It is trite law that issues of fairness of process are entitled to consideration outside of issues of merit of the decision. In light of the submissions I am satisfied that the judge's decision reveals no material error of law requiring me to set it aside, and it stands.

Signed  
**2014**

E DAVIDGE

Date **5<sup>th</sup> November**

Deputy Upper Tribunal Judge Davidge