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

Appeal Number: AA/05373/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 17 November 2015**

**Decision and Reasons Promulgated
On 19 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

T M

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: Mr K Behbahani, Solicitor

DECISION AND REASONS

1. The respondent to this appeal is a citizen of Iran. The appellant is the Secretary of State for the Home Department, who has appealed with the permission of the First-tier Tribunal against a decision of Judge of the First-tier Tribunal Graham, allowing the respondent's appeal against a decision of the Secretary of State refusing to vary his leave to remain on asylum grounds.

2. It is more convenient to refer to the parties as they were before the First-tier Tribunal. I shall therefore refer to TM from now on as “the appellant” and the Secretary of State as “the respondent”.
3. TM’s claim was based on his fear of the authorities in the light of his political opinions and activities. The respondent rejected these matters and found the appellant not credible. The appellant appealed, arguing his account was true and the respondent had not considered it properly. Additionally, the grounds argued the decision was not in accordance with the law because, whilst it stated the appellant would be removed, it did not state under which power removal was to be effected.
4. It appears that, on reflection, the respondent took a similar view because the presenting officer indicated to the judge he wished to withdraw the decision. The judge applied rule 17(2) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber), which provides that permission should be sought from the Tribunal. The judge, noting that the issue had been raised at an earlier case management review hearing but not addressed further by the respondent, refused to accept the withdrawal. In paragraph 17 of her decision she found the decision was not in accordance with the law and the application remained outstanding for a lawful decision to be made. She continued as follows:

“Notice of Decision

I allow the Appeal on asylum grounds but the Appellant does not qualify for humanitarian protection as he is a refugee.

I allow the Appeal on human rights grounds.”
5. The judge also made a fee award of the whole fee of £140.
6. The respondent applied for permission to appeal because, having not made any findings on the claim, the judge should not have allowed the appeal on asylum and human rights grounds. Nor should she have made a fee award. The grounds requested the Tribunal correct the decision under rule 31 and re-promulgate it.
7. In granting permission to appeal, Judge of the First-tier Tribunal Parkes considered the errors identified were of too great a magnitude to be corrected under the “slip rule”.
8. I heard submissions on whether the judge made a material error of law. Both representatives stated the error was material and the decision of Judge Graham should be set aside. They also agreed that the correct course would be to re-make the decision in the terms evidently intended by Judge Graham.

Error of law

9. The decision is plainly mistaken in allowing the appeal on asylum and human rights grounds given the very limited nature of the decision intended by the judge. The judge made no findings at all on the appellant's claim. Whilst this was no doubt an oversight by the judge, permission to appeal having been granted, the matter is

before the Upper Tribunal to decide whether the decision contains a material error of law such that it must be set aside. It plainly does and I therefore set aside the decision and re-make it by substituting the decision which the judge intended to make, that the appeal is allowed to the extent the decision is not in accordance with the law.

10. As for the fee award, this is not an appealable decision. However, it appears a fee was paid in this case and the judge was therefore entitled to make a fee award.

NOTICE OF DECISION

The Judge of the First-tier Tribunal made a material error of law and her decision allowing the appeal is set aside. The following decision is substituted:

The appeal is allowed to the extent the decision is not in accordance with the law.

Signed

Date 17 November 2015

**Judge Froom,
sitting as a Deputy Judge of the Upper Tribunal**