



IAC-FH-AR-V1

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

Appeal Number: AA/07393/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 August 2015**

**Decision & Reasons Promulgated  
On 21 August 2015**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL HUTCHINSON**

**Between**

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

Appellant

**and**

**ALLAMA IQBAL  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Miss A Fijiwala, Home Office Presenting Officer

For the Respondent: Miss A Jones, Counsel, instructed by Waterstone Solicitors

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State for the Home Department against the decision promulgated on 12 June 2015 of First-tier Tribunal Judge Meah who allowed the appeal of Allama Iqbal. However, for ease of reference I refer to the parties as they were in the First-tier Tribunal.

**Background**

2. The Appellant is a citizen of Bangladesh born on 5<sup>th</sup> February 1973. The Appellant applied for asylum on 10<sup>th</sup> September 1999. The final decision on his asylum and ECHR claim was served on 8<sup>th</sup> September 2014 with the reasons for that refusal set out in a letter of the same date.
3. The Appellant appealed on the basis that he is a refugee as defined within The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (hereinafter referred to as “The 2006 Regulations”) or alternatively he claimed humanitarian protection as defined within paragraph 339C of the Immigration Rules. The Appellant also claimed that his removal would be contrary to the European Convention on Human Rights.
4. The Appellant’s appeal came before the First-tier Tribunal on 28 April 2015. Judge of the First-tier Tribunal Meah found that the Respondent had erred in her consideration of the Appellant's Article 8 claim. The Respondent had considered Article 8 under Appendix FM and Rule 276ADE. This was set out in the reasons for refusal letter at pages 8 and 9. The Judge of the First-tier Tribunal found this decision unlawful as not in accordance with the decision in **Edgehill & Anor v Secretary of State for the Home Department [2014] EWCA Civ 402 (02 April 2014)**.
5. The judge found that therefore the Appellant was entitled to have his human rights claim considered in line with the provisions in force at the time he made his application, long before HC 194 and Appendix FM came into force. The judge allowed the Appellant’s appeal to the extent therefore that it was remitted back to the respondent to consider under the previous provisions. The judge also made findings in relation to the Respondent’s substantial delay of over fifteen years in reaching a decision in this case.
6. The Secretary of State for the Home Department applied for permission to appeal to the Upper Tribunal on the basis that the Judge of the First-tier Tribunal had made a material error of law in relying on **Edgehill** (above). It was submitted that in light of the Court of Appeal's decision in **Singh [2015] EWCA Civ 74**, it was argued that the judge had erred.
7. Judge of the First-tier Tribunal Osborne granted permission to appeal on 30<sup>th</sup> June 2015 on the basis that there was an arguable error of law following the case of **Singh** (above). In particular reference was made to paragraphs 56 and 57 thereof, including what was said at paragraph 56(2):

“... but that position was altered by HC 565 - specifically by the introduction of the new paragraph A277C - with effect from 6<sup>th</sup> September 2012. As from that date the Secretary of State was entitled to take into account the provisions of Appendix FM and paragraphs 276ADE - 276DH in deciding private or family life applications even if they were made prior to 9<sup>th</sup> July 2012. The result is that the law as it was held to be in **Edgehill** only

obtained as regards decisions taken in the two month window between 9<sup>th</sup> July and 6<sup>th</sup> September 2012.”

8. The appeal then came before me. Miss Jones indicated, a little reluctantly, that in light of **Singh** there was clearly an error of law, although she submitted that the decision of the First-tier Tribunal was prior to the decision in **Singh**.
9. Both Miss Jones and Miss Fijiwala made submissions that the appeal should be remitted to the First-tier Tribunal. Both parties were in agreement that the First-tier Tribunal Judge had not engaged with the substantive issues either in relation to the Appellant's asylum appeal, and specifically his risk on return as a Bihari (which was accepted by the Respondent), nor with the Article 8 claim. Miss Jones indicated that the appellant and a friend would give evidence.

### **My Findings**

10. I find that the decision of the First-tier Tribunal erred materially in law as it is now clear from **Singh** that the Respondent was entitled to consider Article 8 rights under the provisions which came into force on 9 July 2012, as the decision in this Appellant's case was made on 8 September 2014 and therefore not within the two month window in 2012 outlined in **Singh**.

### **Notice of Decision**

11. The appeal is allowed. The determination of the First-tier Tribunal is set aside. No findings are to stand, Under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2, the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal. The member(s) of the First-tier Tribunal chosen to reconsider the case are not to include Judge Meah.

No anonymity direction was sought or made.

Signed

Date: 19<sup>th</sup> August 2015

M. M. Hutchinson  
Deputy Judge of the Upper Tribunal

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

As this is the respondent's appeal there can be no fee award.

Signed

Date: 19<sup>th</sup> August 2015

M. M. Hutchinson  
Deputy Judge of the Upper Tribunal