



IAC-AH-DP-V1

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

Appeal Number: IA/17671/2014

THE IMMIGRATION ACTS

Heard at Field House

On 6th April 2016

**Decision & Reasons
Promulgated**

On 18th April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

**MRS SAMIA MAHMUD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Rene, Counsel instructed by Waterfields Solicitors

For the Respondent: Ms A Brocklesby-Weller, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Bangladesh whose application for variation of leave to remain here was refused by the Secretary of State and a subsequent appeal before First-tier Tribunal Judge Devittie dismissed in a decision promulgated on 23rd September 2015.
2. Grounds of application were lodged on the basis that the judge had allowed the appeal in open court only to then dismiss it without any

reference to why he changed his mind in his written decision. Furthermore, the decision wrongly stated that the Appellant required the English language requirement and that was the whole basis of her applying for an extension and not indefinite leave to remain.

3. Permission to appeal was duly granted. The Secretary of State responded under Rule 24 stating inter alia that it was unfortunate the judge stated that he was allowing the appeal which was not in accordance with the Procedure Rules but in any event the requirements of the Rules must be met.
4. Before me Mr Rene relied on his grounds and various documentation was produced which persuaded Ms Brocklesby-Weller for the Home office to accept that in fact the provisions of paragraph 284 of the Rules had been met and, if there was an error of law, the appeal should be upheld.

Conclusions

5. There is guidance in Macdonald's Immigration Law and Practice Ninth edition Volume 1 at paragraph 20.129 on page 1884 that in a situation such as happened in this case (namely when a judge allows an appeal in open court but later changes his mind and dismisses it) he is obliged to allow further evidence or submissions in such circumstances. The judge did neither. Mr Rene had appeared at the First-tier hearing and was able to confirm that the judge had indeed said he was going to allow the appeal.
6. In my view and following the jurisprudence mentioned in Macdonald the judge erred in law in not giving the Appellant further time to consider his position given what he had said in open court namely that he was going to allow the appeal. I might add that it is concerning to note that there is no Record of proceedings attached to the file.
7. Because I consider the judge fell into making a material error of law I set the decision aside and in light of the proper concession from the Home Office this appeal must be allowed. There is no need for an anonymity order.

Notice of Decision

The making of the decision by the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remake the decision in the appeal by allowing it.

Signed

Date

Deputy Upper Tribunal Judge J G Macdonald