



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

Appeal Number: AA/04628/2015

**THE IMMIGRATION ACTS**

**Determined on the papers  
Promulgated  
without a hearing  
on 15 December 2017**

**Decision & Reason**

**18 December 2017**

**By**

**Upper Tribunal Judge Southern**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**[B D]**

Respondent

**DECISION**

1. The Secretary of State ("SSHD") has been granted permission to appeal to the Upper Tribunal against the decision of First-tier Tribunal Judge Bird who, by a determination promulgated on 2 July 2017, allowed [BD]'s appeal against a decision of the SSHD to refuse his protection claim.
2. The appeal is presently listed for hearing before the Upper Tribunal on 19 December 2017.
3. The Tribunal has today received a written communication from the SSHD in which she recognises, realistically, that her appeal to the Upper Tribunal has no prospect of success, saying that

"On review of the relatively unusual circumstances in this case it has been decided that the current Grounds of Appeal do not evidence a material error of law...

The SSHD therefore asks that the UT exercise its own discretion under Rule 17(2) and consent to the withdrawal of the appeal from the UT's jurisdiction and delist the appeal..."

4. Rule 17 of the Tribunal Procedure (Upper Tribunal) Rules 2008 provides, so far as is relevant:

Withdrawal

17.-(1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it,-

- (a) By sending or delivering to the Upper Tribunal a written notice of withdrawal; or
- (b) Orally at a hearing.

(2) Notice of withdrawal will not take effect unless the Upper Tribunal consents to the withdrawal except in relation to an application for permission to appeal.

5. Thus, unlike the position in the First-tier Tribunal, a party can seek the Tribunal's consent to the withdrawal of its case but there is no provisions in the rules for a party to withdraw its appeal to the Upper Tribunal. However, in adversarial litigation, where one party withdraws its case that means that the case of the other party goes unchallenged.
6. The Upper Tribunal now provides the consent demanded by rule 17(2) so that the SSHD's case has been withdrawn. That means that there is no challenge to the decision of First-tier Tribunal Judge Bird and no basis upon which to consider that she made any error of law, material or otherwise. The consequence is that the SSHD's appeal to the Upper Tribunal is dismissed and the decision of First-tier Tribunal Judge Bird to allow [BD]'s appeal is to stand.
7. It follows that there will be no hearing on 19 December 2017 and the parties need not attend.

Summary of Decision

8. First-tier Tribunal Judge Bird made no error of law and her decision to allow the appeal of [BD] is to stand.
9. The SSHD's appeal to the Upper Tribunal is dismissed.

Signed



Upper Tribunal Judge Southern  
Date: 15 December 2017