



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

Appeal Number: HU/04104/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 16 May 2017**

**Decision & Reasons Promulgated
On 30 May 2017**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MISS AJ
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Deller, Senior Home Office Presenting Officer

For the Respondent: Mr I Willcox, Counsel instructed by Chancery Solicitors

NOTICE OF ACCEPTANCE OF WITHDRAWAL

1. The appellant (hereafter the Secretary of State) was granted permission to appeal the decision of First-tier Tribunal Judge (FtJ) R Callender Smith allowing the appeal of the respondent (hereafter the claimant), a citizen of Bangladesh, against a decision made on 30 July 2015 refusing to grant limited leave to remain. However, before me, Mr Deller stated that the appellant no longer wished to pursue the appeal and he and Mr Willcox jointly asked me to treat the appeal as withdrawn under Rule 17(2)

Tribunal Procedure (Upper Tribunal) Rules 2008 and subject to a consent order under Rule 39 of the same Rules. I annex a copy of that consent order as signed before me by both representatives.

2. As Mr Deller acknowledged there is some controversy as regards whether following changes to the NIAA 202 it is any longer possible for a Tribunal Judge to “remit” a case to the SSHD, although **SF and Others (Guidance, post-2014 Act) Albania [2017] UKUT 00120 (IAC)** appears to indicate that the powers the Upper Tribunal can be exercised in kindred ways; see also **Greenwood (No 2) [2015] UKUT 629 (IAC)** paragraph 21 on the “fourth option”. In my judgment, it is in the interests of justice that the SSHD has the ability to reconsider her decision in this case, for it is accepted that the claimant’s original application for ILR can be treated as still outstanding, giving her a certain time and opportunity to pass the Life in the UK test, which was the only requirement of the Rules that she did not meet at the time at which that application was first considered.
3. In any event, as a matter of logic, I am only entitled to entertain an appeal if it is pursued by the parties, subject only to my agreement to treat its case as withdrawn. In this case, I have no hesitation in acting under Rule 17 of the Procedure Rules and agreeing the withdrawal of the SSHD’s case.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 26 May 2017



Dr H H Storey
Judge of the Upper Tribunal

ANNEX

**IN THE UPPER TRIBUNAL
HU/04104/2015
IMMIGRATION AND ASYLUM CHAMBER**

Ref:

In the matter of

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

and

**A B J
Respondent**

Upon the Secretary of State undertaking to allow the respondent 28 days within which to lodge an application to vary her application for leave to remain.

CONSENT ORDER UNDER RULE 39(1)

Pursuant to Rule 39(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008, the parties consent to the disposal of the above appeal on the following agreed basis:

1. That with the Tribunal’s consent under Rule 17(2) the Secretary of State withdraws her case that the First tier Tribunal’s decision was materially flawed error of law;
2. That the appeal is therefore summarily dismissed; and
3. That the decision of the First tier Tribunal shall stand and the matter shall return to the Secretary of State to make a lawful decision on the outstanding application such application being subject to possible variation.

Signed: PETER DELLER
(Specialist Appeals Team)
15-05-2012

Signed: Peter Deller

**For the Appellant
Respondent**

For the

HU041042015

Appeal Number:

**Date: 15 May 2017
2017**

Date: 15 May