



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

Appeal Number: PA/13203/2017

THE IMMIGRATION ACTS

**Heard at Manchester
On 15 March 2019**

**Decision & Reasons Promulgated
On 29 April 2019**

Before

**UPPER TRIBUNAL JUDGE O'CONNOR
DEPUTY UPPER TRIBUNAL JUDGE O'RYAN**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR MS
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr C Bates, Senior Home Office Presenting Officer
For the Respondent: Mr Bradshaw, Counsel, instructed by SMK Solicitors

DECISION AND REASONS

1 Judgment delivered orally on 15 March 2019

- 1 This is an appeal brought by the Secretary of State against the decision of Judge of the First-tier Tribunal Graham dated 19 October 2018. The Respondent is a national of Pakistan. He claims to have entered the UK in 1994 by plane, aged 6, and to have remained here since that time. In February 2015 he was detained by police and on 13 February 2015 he made a protection and human rights claim, asserting that he was at risk of serious harm in Pakistan, and that he had also resided in the United

Kingdom for at least 20 years, and that he was thus entitled to leave to remain under paragraph 276ADE(1)(iii) of the Immigration Rules. The Appellant refused that application in a decision dated 30 November 2017.

- 2 The Respondent appealed to the First-tier Tribunal. The matter came before the judge at the Hearing Centre at Priory Court, Birmingham on 21 September 2018. The Respondent gave evidence.
- 3 In his decision dated 19 October 2018 the judge rejected the credibility of the Respondent's claim to fear serious harm in Pakistan, and to have lived in the United Kingdom for at least 20 years. The judge also considered whether the Respondent's removal would amount to a disproportionate interference with his rights under Article 8 ECHR, and found, for reasons given within the body of the decision, that it would not.
- 4 However, the notice of decision given at the end of the decision states as follows:
 - "I dismiss the appeal on asylum grounds.
 - I dismiss the appeal on humanitarian protection grounds.
 - I allow the appeal on human rights grounds."
- 5 In an application dated 6 November 2018, the Appellant applied to the First-tier Tribunal for permission to appeal to the Upper Tribunal, arguing, in summary, that the findings of fact made and the reasoning set out within the main body of the decision were inconsistent with the judge's apparent notice of decision at the end of the decision to have allowed the appeal on human rights grounds. The Appellant invited the Tribunal to correct this apparent error by invoking its powers under Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 ('the 2014 Rules') which provides as follows:
 - "Clerical mistakes and accidental slips or omissions
 - 31. The Tribunal may at any time correct any clerical mistake or other accidental slip or omission in the decision, direction or any document produced by it, by-
 - (a) providing notification of the amended decision or direction, or a copy of the amended document, to all parties; and
 - (b) making any necessary amendment to any information published in relation to the decision, direction or document."
- 6 In a decision dated 26 November 2018, Judge of the First-tier Tribunal Keane granted permission to appeal, finding that the ground of appeal was arguable. No consideration appears to have been given to the Appellant's specific request that the First-tier Tribunal, to whom the application for permission was made, exercise its power under Rule 31 as requested.
- 7 Following that grant of permission to appeal, the matter was listed before the Upper Tribunal with standard directions having been issued to both

parties. That included a requirement that the Respondent to this appeal provide a response to the Appellant's notice of appeal, under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('the 2008 Rules'), setting out whether the appeal was resisted and on what grounds. No such response has been provided to the Tribunal.

- 8 We have heard from Mr Bates for the Appellant Secretary of State and from Mr Bradshaw for the Respondent. Mr Bradshaw sought to resist the Appellant's appeal on the basis that there was procedural unfairness in the judge having purported within the body of the decision to reject both the protection and human rights claims, but to have given notice in the notice of decision at the end of the document that the appeal was allowed on human rights grounds. Mr Bradshaw referred to the authority of MM (unfairness; E & R) [2014] UKUT 105; in particular to paragraph 14 of that decision, that litigants are entitled to a fair hearing, and to paragraph 15, which contains a distillation of principles found in previous authority relating to procedural unfairness:

“(i) The defect, or impropriety, must be procedural in nature. Cases of this kind are not concerned with the merits of the decision under review or appeal. Rather, the superior court's enquiry focuses on the process, or procedure, whereby the impugned decision was reached,

(ii) It is doctrinally incorrect to adopt the two stage process of asking whether there was a procedural irregularity or impropriety giving rise to unfairness and, if so, whether this had any material bearing on the outcome. These are, rather, two elements of a single question, namely whether there was procedural unfairness.

(iii) Thus, if the reviewing or appellate Court identifies a procedural irregularity or impropriety which, in its view, made no difference to the outcome, the appropriate conclusion is that there was no unfairness to the party concerned.

(iv) The reviewing or appellate Court should exercise caution in concluding that the outcome would have been the same if the diagnosed procedural irregularity or impropriety had not occurred.

- 9 Mr Bradshaw sought to argue that the result of the judge's decision, which contained reasoned findings within the body of the decision rejecting the various elements of the Respondent's case, but purporting at the end of the decision to allow the appeal on human rights grounds, was that the Respondent had been treated unfairly. However, Mr Bradshaw was unable to identify to us any unfairness in the process or procedure adopted in the hearing, or any other form of unfairness which was evident from the body of the decision. We find that the notice of decision is not something which is procedural, but rather represents the final and substantive decision taken in respect of the appeal.
- 10 In reply to a direct question from the Tribunal, Mr Bradshaw accepted that there was no challenge from the Respondent against any of the reasoning or findings contained within the body of the judge's decision. In those

circumstances we reject the proposition that there was any procedural unfairness in the judge's decision.

- 11 Following AS (Afghanistan) v Secretary of State for the Home Department [2019] EWCA Civ 208, it is apparent that the Upper Tribunal has a power under Rule 42 of 2008 Rules to correct any clerical mistake or other accidental slip occurring in a notice of decision, or indeed within the reasons given reasons for its decisions. However, it is to be noted that the slip contended by the Appellant is not in a decision of the Upper Tribunal. Further, it is implicit within the Court's decision in AS (Afghanistan) (and thereby overruling Katsonga v Secretary of State for the Home Department ("Slip Rule"; FtT's general powers: Zimbabwe) [2016] UKUT 228 (IAC) on this point) that the First-tier Tribunal would possess a similar power, under Rule 31 of the 2014 Rules. However, although the Appellant's application for permission to appeal contained a request that the Tribunal (ie the First-tier Tribunal) exercise its power under Rule 31 of the 2014 Rules, no action was taken in relation to that request.
- 12 The Upper Tribunal has the power to constitute itself as the First-tier Tribunal, as a judge of the Upper Tribunal is by operation of s.4(1)(c) Tribunal, Courts and Enforcement Act 2007, also a judge of the First-tier Tribunal. It would therefore be within the power of this Tribunal to constitute itself as the First-tier Tribunal, and to consider the request made by the Appellant to correct the alleged accidental slip within the judge's decision under Rule 31 of the 2014 Rules.
- 13 However, we find that the appeal may be disposed of in a more conventional manner, by considering, as the Upper Tribunal, whether the judge's decision involved the making of an error of law.
- 14 We find that the judge's decision did contain an error of law. Where the judge enunciated the decision within the notice of decision that the appeal was allowed on human rights grounds, that decision was directly contrary to the undisputed content of the body of the decision. The notice of decision was therefore given without any reasoned basis to support it.
- 15 We therefore set aside the judge's decision allowing the appeal on human rights grounds.
- 16 We are then tasked with remaking the decision. Given that the Respondent has accepted that there is no error of law found within any of the reasoning or findings contained within the judge's decision, we see no reason to disturb any of it. The judge's decision to dismiss the appeal on asylum and humanitarian grounds stands unchallenged.
- 17 Applying the findings and reasoning given by the judge in the body of the decision, we dismiss the Respondent applicant's appeal on human rights grounds.

Decision

The decision involved the making of a material error law.

The judge's decision allowing the appeal on human rights grounds is set aside.

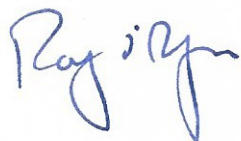
We remake the decision, dismissing the applicant's appeal on human rights grounds.

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

The appeal involved a protection claim. 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: 11.4.19

A handwritten signature in blue ink, appearing to read 'P. Ryan', is written over the printed name.

Deputy Upper Tribunal Judge O'Ryan