



**In the Upper Tribunal  
(Immigration and Asylum Chamber)  
Judicial Review**

JR/9868/2017

In the matter of an application for Judicial Review

The Queen on the application of Teoh Chong Tuan

Applicant

versus

First-tier Tribunal (IAC)

First Respondent

Secretary of State for the Home Department

Second Respondent

**ORDER**

**BEFORE Upper Tribunal Judge Kopieczek**

HAVING considered all documents lodged and having heard Mrs J Gray of counsel, instructed by the Government Legal Department on behalf of the Second Respondent, the First Respondent not being represented and there being no appearance by or on behalf of the Applicant, at a hearing on 7 September 2021

IT IS ORDERED THAT:

- (1) The application for judicial review is refused for the reasons given in the attached judgment.
- (2) No order as to costs.
- (3) Permission to appeal to the Court of Appeal is refused.

Signed:       **A.M. Kopieczek**

**Upper Tribunal Judge Kopieczek**

Dated:       16 November 2021

**The date on which this order was sent is given below**

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**For completion by the Upper Tribunal Immigration and Asylum Chamber**

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date):

Solicitors:

Ref No.

Home Office Ref:

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**Notification of appeal rights**

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a point of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).

IN THE UPPER TRIBUNAL

JR/9868/2017

Field House  
Breams Buildings  
London  
EC4A 1WR

7 September 2021

Judgment given at hearing

**THE QUEEN  
(ON THE APPLICATION OF)  
TEOH CHONG TUAN**

Applicant

and

**First-tier Tribunal (IAC)**

First Respondent

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

Second Respondent

**BEFORE**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

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No appearance by or on behalf of the Applicant.

Mrs J Gray, Counsel, instructed by the Government Legal Department appeared on behalf of the Second Respondent.

The First Respondent was not represented.

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**ON AN APPLICATION FOR JUDICIAL REVIEW**

**JUDGMENT**  
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JUDGE KOPIECZEK:

1. Notice was given that the First Respondent was not taking part in the proceedings.
2. So far as the Applicant is concerned, it appears from the information before me that her whereabouts have not been known for some considerable time. I propose to proceed in her absence because I am satisfied pursuant to rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 that reasonable steps have been taken to notify her of the hearing and it is in the interests of justice to proceed without her.
3. It would have been preferable if notice of the hearing had been sent to her at her last known address, which is Yarl's Wood detention centre, however ineffective that might have been; but that has been done.
4. Nevertheless, directions were sent to her c/o Yarl's Wood and the directions indicated that they were made in anticipation of the hearing being listed. Plainly, the Applicant was not notified or could not be notified by Yarl's Wood about the forthcoming hearing - the date was not actually specified in those directions - or if she was notified, she has not responded to the Tribunal. It appears that the Tribunal, mistakenly, sent notice of the hearing to Duncan Lewis Solicitors but Duncan Lewis notified the Tribunal that they were no longer on record, That, therefore, would not have been effective notice of the hearing.
5. At the same time as the directions and notification of the prospective hearing were sent to Yarl's Wood addressed to the Applicant, Duncan Lewis were also asked to forward the directions to the Applicant to any address that they had for her. I am not aware that Duncan Lewis have responded to that request. It is reasonable to assume that if they had an address for her they would have forwarded the directions to her.
6. It also appears that a letter was sent to the Applicant by the Government Legal Department in July 2020 in relation to what was then a proposed consent order. The address to which it was sent in Dover is not an address at which the Applicant was then residing because it seems that the letter was returned, endorsed in manuscript, that she did not live there anymore.
7. Looking at all those circumstances, I am satisfied that reasonable steps have been taken to notify the Applicant of the hearing and I

am satisfied that it is in the interests of justice to proceed with the hearing in the Applicant's absence. Quite apart from all the foregoing, it does not appear that the Applicant has taken the trouble of notifying the Tribunal of her current address.

8. So far as the claim is concerned, summarising the position, the Applicant has issued judicial review proceedings in respect of two decisions. The first is a decision of the Second Respondent made in 2017 to remove the Applicant to Malaysia. The second is a decision of the First Respondent to refuse to re-instate the Applicant's appeal before the First-tier Tribunal in case number PA/06413/2017. That was an appeal in relation to the refusal of an asylum claim.
9. In a decision dated 21 March 2018 Judge Blum granted permission to bring judicial review proceedings and ordered a stay on removal. There was a previous grant of a stay by Upper Tribunal Judge McWilliam.
10. What then happened, materially for these purposes, is that Mr Justice Choudhury approved a consent order. However, the parties had not signed the consent order. Part of the consent order was an order for "The Respondent" to pay the Applicant's reasonable costs which was something that the Respondents (plural) were not content with.
11. Then, on 11 March 2019, Upper Tribunal Judge Coker set aside Choudhury J's apparent approval of the consent order on the basis that the consent order was not signed. Judge Coker's set aside decision also contained an error because she mistakenly referred to it as approval of a consent order by herself, not referring to Choudhury J. Nevertheless, it is clear that she was referring to Choudhury J's approval of the consent order.
12. It is clear from that sequence of events that the judicial review remains outstanding, the application for permission having been granted, there not being any valid consent order (it was set aside), and no withdrawal of the claim or other disposal.
13. The Applicant has not been removed, as far as I am aware. It appears from the documents before me that the removal directions were deferred. The application for judicial review in respect of the Second Respondent's decision to remove the Applicant while, according to her, there was an appeal pending, is academic because she has not been removed. There are no removal directions in place and nothing to suggest that she is about to be removed. That claim being academic, it is dismissed.
14. Which brings me to the second aspect of the claim, which is

the refusal by the First Respondent to re-instate the Applicant's appeal. On the one hand, the apparent concession by both Respondents that the First Respondent wrongly failed to adopt the correct procedural steps as set out in *AP (Withdrawals-nullity assessment) Pakistan [2007] UKAIT 00022*, on the basis that there was no "meeting of the minds", on the face of it ought to mean that the Applicant's judicial review claim in that respect should succeed. However, the consent order was not effectively approved because it was not signed by the parties. It has been set aside in any event.

15. More importantly perhaps, it does not appear that the Applicant has expressed any interest in pursuing her claim for judicial review in that respect, or in pursuing an appeal before the First-tier Tribunal. It is said that she has absconded. She has not engaged with the Upper Tribunal in respect of the claim. It does not appear that she has been in contact with the First-tier Tribunal to investigate what has happened to her claim. Even if it could be said that the claim ought to succeed in that respect and the appeal ought to be re-instated in the First-tier Tribunal, it seems to me that nothing would happen as a result of any order I might make in that respect. Given the lack of engagement by the Applicant, no purpose would be served in granting the application for judicial review in that respect either, because the Applicant appears to have shown no interest in pursuing that appeal or these proceedings. That aspect of the application for judicial review is also refused.
16. Accordingly, I refuse the application for judicial review in both its aspects, the removal directions and the refusal to re-instate the appeal.

### **Costs**

17. So far as costs are concerned, I cannot see why that normal rule should not follow. Although, there were proposals for settlement, the Applicant has in fact not succeeded in her claim in either respect. She has not engaged with the proceedings. Accordingly, my provisional view, subject to anything you want to say Mrs Gray, is that there be no order as to costs. Is there anything you want to say in dissent from that?
18. Mrs Gray: No Sir, you will have seen our submissions on that point.
19. Judge Kopieczek: Yes.
20. Mrs Gray: In the skeleton argument, in the submissions on costs.

21. Judge Kopieczek: Yes, I've seen your written submissions and there have been no submissions from the Applicant.
22. The Applicant is not here and therefore cannot make an application for permission to appeal to the Court of Appeal and I shall deal with the matter accordingly. Permission to appeal to the Court of Appeal is refused.
23. Rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008 requires that where a decision that disposes of immigration judicial review proceedings is given at a hearing and no application for permission to appeal is made at that hearing, the Upper Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal. I have considered the matter and I refuse permission to appeal to the Court of Appeal, there being no arguable error of law in this decision.
24. Although I indicated at the hearing that I would send an embargoed judgment to the parties, I no longer consider that to be necessary.~~~~0~~~~