



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

Appeal Number: PA/06201/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 2 February 2022**

**Decision & Reasons Promulgated
On 31 March 2022**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**ASM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Unrepresented/no appearance by the Appellant

For the Secretary of State: Ms A Everett

DECISION AND REASONS

**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.

1. The Appellant is a citizen of Bangladesh. His date of birth is 4 July 1989.

2. On 19 October 2021 I set aside the decision of the First-tier Tribunal to allow the Appellant's appeal against the decision of the Secretary of State on 19 June 2019 to refuse his application on asylum grounds under Articles 3 and 8 of ECHR, following the grant of permission to the Secretary of State. There was no cross-challenge by the Appellant to the decision of the First-tier Tribunal to dismiss his appeal on asylum grounds. So far as that decision is concerned it is maintained. The matter was relisted for a resumed hearing on 2 February 2022.
3. On 21 January 2022 the Appellant made an application through his solicitors for "his appeal" to be withdrawn. He provided a letter of instruction to his solicitors confirming this which was forwarded to the Upper Tribunal. Upper Tribunal Judge Smith consented to the withdrawal of the Appellant's case pursuant to Rule 17(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the 2008 Procedure Rules), however, he indicated that it would be a matter for the Secretary of State whether she wishes to withdraw her case, as this is her appeal. A notice was issued to the parties.
4. There was communication from Mr Deller from the Home Office to the UT. His position can be summarised. He highlights the potential difficulties with applying Rule 17 to a situation like this after an error has been found but before the re-making of an appeal. He submits that one interpretation of withdrawing a case could mean that the original Appellant is now ceasing to rely in their entirety on the grounds that removal in consequence of the decision would breach protected rights under ECHR which would potentially bear upon consideration under paragraph 353 of a potential fresh claim. Mr Deller emphasises that it is important that the consequences of withdrawal of a case by one or both parties are clearly understood and what the result is. He suggests one path would be for the parties to agree a consent order under Rule 39.
5. However, at the hearing before me Ms Everett resiled from Mr Deller's communication and submitted that it was open to the Appellant to make an application to withdraw his case and the implications would have been explained to him by his representatives. I agree that it can be reasonably inferred that the Appellant's representatives explained the implications of withdrawal to their client and that he has made an informed decision.
6. The matter remained in the list as a result of Mr Deller's email. However, a further email was put before me from the Appellant's solicitors indicating that they were no longer instructed (as from 2 February).

Rule 17

"Withdrawal

- 17. -** (1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it -
- (a) at any time before a hearing to consider the disposal of the proceedings (or, if the Upper Tribunal disposes of

the proceedings without a hearing, before that disposal), 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.
- (3) A party which has withdrawn its case may apply to the Upper Tribunal for the case to be reinstated.
- (4) An application under paragraph (3) must be made in writing and be received by the Upper Tribunal within 1 month after -
 - (a) the date on which the Upper Tribunal received the notice under paragraph (1)(a); or
 - (b) the date of the hearing at which the case was withdrawn orally under paragraph (1)(b).
- (5) The Upper Tribunal must notify each party in writing of a withdrawal under this rule."

7. The Appellant has withdrawn his case after I set aside the decision of the First-tier Tribunal. Under Section 12 of the Tribunals, Courts and Enforcement Act 2007, if the Upper Tribunal finds the making of the decision involved the making of an error on a point of law and, as in this case, sets the decision aside it must either, (i) remit the case to the First-tier Tribunal with directions for its consideration, or (ii) re-make the decision.¹
8. The Appellant has chosen not to participate in the proceedings. There is no reason why I should remit the case to be re-heard by the First-tier Tribunal in the light of the withdrawal of his case. I re-make the decision. In the

¹ **"12 Proceedings on appeal to Upper Tribunal**

- (1) Subsection (2) applies if the Upper Tribunal, in deciding an appeal under section 11, finds that the making of the decision concerned involved the making of an error on a point of law.
- (2) The Upper Tribunal -
 - (a) may (but need not) set aside the decision of the First-tier Tribunal, and
 - (b) if it does, must either -
 - (i) remit the case to the First-tier Tribunal with directions for its reconsideration, or
 - (ii) re-make the decision.
- (3) In acting under subsection (2)(b)(i), the Upper Tribunal may also -
 - (a) direct that the members of the First-tier Tribunal who are chosen to reconsider the case are not to be the same as those who made the decision that has been set aside;
 - (b) give procedural directions in connection with the reconsideration of the case by the First-tier Tribunal.
- (4) In acting under subsection (2)(b)(ii), the Upper Tribunal -
 - (a) may make any decision which the First-tier Tribunal could make if the First-tier Tribunal were re-making the decision, and
 - (b) may make such findings of fact as it considers appropriate."

light of the failure by the Applicant to advance a case, his appeal must be dismissed.

9. The Appellant's appeal is dismissed.

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Signed Joanna McWilliam

Date 8 February 2022

Upper Tribunal Judge McWilliam