



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-001000 &**  
**004041**  
**First-tier Tribunal No:**  
**PA/50098/2021**  
**IA/00991/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 14 March 2024**

**Before**

**UT JUDGES MACLEMAN & PITT**

**Between**

**S Y**

**and**

**Appellant**

**Secretary of State for the Home Department**

**Respondent**

For the Appellant: Mr A Heeps, of McGlashan MacKay, Solicitors  
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

Heard at Edinburgh on 6 March 2024

**DECISION AND REASONS**

1. The appellant made an asylum claim, exhausted his appeal rights against refusal, and then made further submissions to the respondent. Those were rejected, with a further right of appeal, on 11 December 2020.
2. First-tier Tribunal (FtT) Judge McLaren dismissed the appellant's appeal by a decision dated 29 November 2021.
3. On 14 March 2022, FtT Judge Beach refused permission to appeal to the Upper Tribunal (UT).
4. The appellant applied to the UT for permission. By a decision ("the first decision") dated 31 May 2022 and issued on 1 October 2022, reference UI-

2022-004041, UT Judge Lane found that the grounds were not of arguable merit, and refused that application.

5. The appellant did not seek to challenge that decision.
6. Through an administrative oversight, the application to the UT for permission was processed for a second time, given the reference UI-2022-001000, and placed before UT Judge Kopieczek. There was nothing to inform him that the application had already been decided.
7. By a decision (“the second decision”) dated 8 December 2023 and issued on 13 December 2023 UT Judge Kopieczek decided (or purported to decide) that the grounds were arguable, and granted permission.
8. Having noticed the foregoing anomaly, the UT directed parties to provide skeleton arguments “addressing which of these two decisions should be set aside”, and fixed the hearing before us to decide the matter.
9. The SSHD’s skeleton argument dated 16 February 2024 invites the UT to “revoke” the second decision, exercising its powers under section 25 of the Tribunals, Courts and Enforcement Act 2007, which provides:
  - 25 Supplementary powers of Upper Tribunal
    - (1) In relation to the matters mentioned in subsection (2), the Upper Tribunal—
      - (a) has, in England and Wales or in Northern Ireland, the same powers, rights, privileges and authority as the High Court, and
      - (b) has, in Scotland, the same powers, rights, privileges and authority as the Court of Session.
    - (2) The matters are—
      - (a) the attendance and examination of witnesses,
      - (b) the production and inspection of documents, and
      - (c) all other matters incidental to the Upper Tribunal's functions.
10. The argument, prepared by another Presenting Officer, refers to section 25(1)(a) of the Act, to the Civil Procedure Rules, and to the High Court’s inherent jurisdiction; but those relate to the supplementary powers of the UT in England and Wales, not in Scotland. Any relevant power in this case arises from section 25(1)(b) and (2)(c).
11. The appellant’s skeleton argument, filed on 21 February 2024, agrees with the respondent’s position “... namely that the [second decision] is not competent and is null and void”. It cites *Patel v SSHD* [2015] EWCA Civ 1175 at [60-69] as authority that there is no provision for the UT to review

an excluded decision, and *Devani v SSHD* [2020] 1 WLR as authority that the “slip rule” is not available where the situation is not one where there was a slip of the pen.

12. In oral submissions, representatives agreed, that whatever terminology was apt, we were enabled by section 25(1)(b) of the 2007 Act to arrive at the practical result agreed between them. We thank both representatives for their assistance.
13. Provisions for “Correcting, setting aside, reviewing and appealing decisions of the UT” are contained in part 7, paragraphs 41 - 48, of The Tribunal Procedure (Upper Tribunal) Rules 2008 (“the rules”).
14. Mr Heeps was correct in submitting that paragraph 42, “the slip rule”, does not apply. The circumstances here plainly go beyond a “clerical mistake or other accidental slip or omission in a decision or a record of a decision”.
15. The only possibly relevant power is in paragraph 43 of the rules. Sub-paragraph (1) enables the UT to “set aside a decision which disposes of proceedings” on various alternative conditions, set out in sub-paragraph (2), including at (d), “some other procedural irregularity in the proceedings”.
16. The second decision was undoubtedly tainted by procedural irregularity, having been taken in ignorance of the first decision.
17. However, we do not consider that sub-paragraph 43(1) applies, because:
  - (i) a grant of permission is not a decision which disposes of proceedings;
  - (ii) we doubt if a grant of permission might be considered as a decision which disposes of “a part of the proceedings”, in terms of the definition in paragraph 1(3) of the rules; and
  - (iii) the second decision did not dispose of proceedings, because that had already been accomplished by the first decision.
18. Our conclusion is that where the UT has purported to make a decision on an application for permission which has already been decided, the UT has no power to remedy the matter under the rules, and the appropriate course is for the UT to set aside or reduce the second decision, exercising its powers under section 25 of the 2007 Act.
19. Although parties are not at odds on the practical outcome, we have not had specific submissions on how our decision should be framed, and were not referred to authority on the powers of the Court of Session, or to the Rules of the Court of Session. The supervisory jurisdiction to invalidate a

purported decision of an inferior court or tribunal in Scotland is generally accomplished by an action of reduction.

20. For avoidance of doubt, we express our decision comprehensively:
- (i) The decision of UT Judge Lane, refusing permission to appeal to the UT, stands.
  - (ii) The decision, or purported decision, of UT Judge Kopieczek, granting permission to appeal to the UT, is reduced, in exercise of our powers under section 25 of the Tribunals, Courts and Enforcement Act 2007. It is set aside; null and void; and of no force or effect.
  - (iii) There is no appeal before the UT for decision under section 11 of the 2007 Act.
21. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including his name or address, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court.

Hugh Macleman

Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
11 March 2024