R (on the application of Bhudia) v Secretary of State for the Home Department (para 284(iv) and (ix)) IJR [2016] UKUT 00025 (IAC)

Upper Tribunal
Immigration and Asylum Chamber

Judicial Review Decision Notice

The Queen on the application of Jyotika Priyesh Bhudia

Applicant

v

Secretary of State for the Home Department

Respondent

Before The Honourable Mr Justice McCloskey, President
Upper Tribunal Judge Plimmer

Judgment

Delivered orally on 20 November 2015 and in writing on 02 December 2015

Application for judicial review: substantive decision

On this substantive application for judicial review and following consideration of the documents lodged by the parties and having heard Mr M Ahmed and Mr I Ali, both of Counsel, instructed by Equity Law Solicitors on behalf of the Applicant and Mr S Karim, of Counsel, instructed by the Government Legal Department on behalf of the Respondent, at a hearing at Manchester Civil Justice Centre, on 20 November 2015.

(i) The correct construction of paragraph 284(iv) of the Immigration Rules is that the applicant has a period of 28 days within which to make an extension of stay application, measured from the date immediately following the last day of leave in the United Kingdom.

(ii) The purported requirement in Form FLR(M) that an application for further leave to remain in the United Kingdom as a spouse be supported by certain correspondence in specified terms is unlawful.

(iii) The requirement previously enshrined in paragraph 284(ix)(a) of the Immigration Rules that an applicant provide an English Language test certificate in specified terms is satisfied where the applicant has already provided a certificate of this kind to the Secretary of State which has been accepted as valid.

(iv) The jurisdiction of the Upper Tribunal in judicial review proceedings to determine any of the issues raised is not extinguished by the Secretary of State's withdrawal of the decision under challenge: R v Secretary of State for the Home Department, ex parte Salem [1999] AC 450 applied.

Decision: the application for judicial review is granted

McCloskey J

Introduction

1. This judgment, to which both members of the panel have contributed, determines the Applicant's substantive application for judicial review, permission having been granted by order of His Honour Judge Raynor QC dated 13 February 2015.

2. The material facts are uncontentious and we summarise them thus. The Applicant is a national of India, aged 24 years. She and her husband were married in India on 19 October 2011. Her husband is a person present and settled in the United Kingdom. On 05 February 2012, the Applicant was granted entry clearance, valid until 15 May 2014, in her capacity of spouse of such a person. On 30 May 2014 she applied to the Secretary of State for the Home Department (hereinafter "*the Respondent*") for further leave to remain in the United Kingdom in the same capacity. By the Respondent's decision dated 02 July 2014 this application was refused. This refusal is the subject of the Applicant's judicial review challenge.

The Impugned Decision

3. The Respondent's decision maker gave three reasons for refusing the application:

(a) The Applicant did not have leave to enter or remain at the time of applying as her leave had expired on 15 May 2014.

(b) "*You have failed to demonstrate that your marriage is subsisting by not providing six items of correspondence addressed to you and your partner at the same address as evidence that you have been living together during the past two years*".

(c) "*You have not provided evidence that you have achieved a qualification in English to LEVEL A1 of the Common European Framework of Reference for Language*".

We shall consider each of these reasons in turn. We preface this with the observation that, in substance, the grounds upon which the Respondent's decision is impugned are a mixture of

illegality and a breach of the Wednesbury principles consisting of irrationality and a failure to take into account all material evidence.

The Paragraph 284(iv) Issue

4. Paragraph 284 of the Immigration Rules ("*the Rules*") enshrines a series of requirements to be satisfied in the case of a person seeking "*an extension of stay as the spouse or civil partner of a person present and settled in the United Kingdom*". In the context of these proceedings, the material requirement is the following:

> "*The requirements for an extension of stay as the spouse or civil partner of a person present and settled in the United Kingdom are that ……..*
>
> *(iv) The applicant has not remained in breach of the immigration laws, disregarding any period of overstaying for a period of 28 days or less ….*"

This is one of a lengthy series of conjunctive requirements listed in paragraph 284. Paragraph 285 is also significant:

> "*An extension of stay as the spouse or civil partner of a person present and settled in the United Kingdom may be granted for a period of two years in the first instance, provided the Secretary of State is satisfied that each of the requirements of paragraph 284 is met.*"

[The underlining is ours, for reasons which will become apparent *infra*]

5. There are three particularly significant dates. The first is 15 May 2014, the date upon which the Applicant's leave to remain in the United Kingdom expired. The second is 30 May 2014, the date upon which she made her application to the Respondent. The third is 02 July 2014, the date of the Respondent's decision. It is common ground that the Applicant became an overstayer on 16 May 2014. The simple question is whether, given this status and having regard to the aforementioned dates, paragraph 284(iv) is to be construed and applied to her benefit or detriment.

6. This issue, which requires paragraph 284(iv) of the Rules to be construed by the Tribunal, gives rise in our judgement to a relatively uncomplicated exercise and outcome. The arguments on behalf of the parties joined issue on the question of whether the "period of grace" of 28 days is to be measured by reference to the date of the application made under paragraph 284 or the date of the Respondent's decision. The two competing interpretations in the arguments of the parties' representatives are:

(a) The applicant has a period of 28 days within which to make the extension of stay application, measured from the date immediately following the last day of lawful sojourn in the United Kingdom.

(b) Irrespective of the date upon which the extension of stay application is made, the applicant becomes an unlawful overstayer upon the expiry of 28 days beginning on the date immediately following the last day of lawful sojourn in the United Kingdom, with the result that if the Secretary of State has not determined the application within such 28 day period it must be refused on account of non-compliance with paragraph 284 (iv).

7. In Mahad (And Others) v Entry Clearance Officer [2009] UKSC 16, Lord Brown, collating and summarising dicta of the Court of Appeal and recalling the words of Lord Hoffmann in Odelola v Secretary of State for the Home Department [2009] 1 WLR 1230, at [4], stated at [10]:

> "*Essentially it comes to this. The Rules are not to be construed with all the strictness applicable to the construction of a statue or a statutory instrument but, instead, sensibly according to the natural and ordinary meaning of the words used, recognising that they are statements of the Secretary of State's administrative policy ….*
>
> [The intention of the Secretary of State] *is to be discerned objectively from the language used, not divined by reference to supposed policy considerations. Still less is the Secretary of State's intention to be discovered from Immigration Directorates Instructions (IDIs) issued intermittently to guide immigration officers in their application of the Rules …. pursuant to paragraph 1(3) of Schedule 2 to the 1971 Act ….*"

Further guidance is provided by Iqbal (And Others) v Secretary of State for the Home Department [2015] EWCA Civ 169, at [31], which highlighted that the exercise of rewriting any provision of the Rules under the guise of purposive construction is a forbidden one. It was further stated, at [33], that the court:

> "*… cannot and should not construe the Secretary of State's rules to mean something different from what, on a fair objective reading, they actually say.*"

Finally, we remind ourselves of the long established principle of statutory interpretation that the Court will lean against a construction giving rise to an absurdity where the words in question are capable of bearing the suggested alternative meaning.

8. Against this background of principle, we consider paragraph 284(iv) of the Rules in its full context. Paragraph 284 belongs to Part 8 of the Rules, which is a free standing compartment dedicated exclusively to the topic of "Family Members". In broad terms, it regulates the grant of leave to enter and remain in the United Kingdom to different types of members of the family of a person who is residing lawfully here. The family members who are the subject of regulation within this regime, which operates in tandem with Appendix FM, include spouses and civil partners. It is clear from a reading of Part 8 as a whole that the decision making process which it contemplates in every case will have three basic elements: an application by the person seeking the benefit or status in question, the consideration of such application and the determination thereof by a final decision.

9. The scheme of paragraph 284 of Part 8 is to list a series of requirements which must be satisfied by a person seeking an extension of stay as the spouse or civil partner of a person present and settled in the United Kingdom. On behalf of the Respondent, Mr Karim submitted that paragraph 284(iv) is to be construed as meaning that if an applicant's extension of stay application has not been determined within a period of 28 days beginning on the date when the applicant became an overstayer, the application is non-compliant with paragraph 284 and must be refused. We reject this submission. We prefer the construction that the 28 day period specified in paragraph 284(iv) is to be measured by reference to the date of the application made and that the requirement enshrined in this subparagraph is satisfied provided that the application is made within a period of 28 days beginning on the date immediately following the final day of the applicant's lawful sojourn in the United Kingdom. We thus conclude for the following reasons.

10. The Respondent's submission is not supported by the wording of the rule. Nor does it derive force from any of the surrounding provisions. It creates the spectre of a world of uncertainty and unpredictability in which the question of whether an applicant's permitted period of overstaying 28 days maximum is to be disregarded for the purposes of 284(iv) would hinge upon the unpredictable and uncertain event of the determination of his application. We can find no indications in the rule that this is the underlying intention. The construction which

we prefer is supported by the values and merits of coherence, certainty and predictability. It is further reinforced by the consideration that the one clear and certain touchstone throughout the paragraph 284 regime is the date upon which the application is made. We take judicial notice of the reality that the determination of applications made under the Immigration Rules is frequently delayed for many months and, indeed, longer still, sometimes several years. The Respondent's suggested construction would mean that a person who lodged his application many months, or indeed longer, prior to expiry of his lawful status in the United Kingdom and which application complied with all of the other provisions of paragraph 284 would abruptly and without notice or forewarning suddenly find his application non-compliant solely on the ground of its heavily delayed determination. This would be both capricious and manifestly unfair. We further consider that this would give rise to an aberrant, capricious and wholly unjustifiable outcome.

The Six Items of Correspondence issue

11. As recorded in [3] above, the second refusal reason was based on the Applicant's failure to provide six items of correspondence of a certain type. The provenance of this "requirement" is of some significance. It is nowhere to be found in primary or secondary legislation. Nor is it contained anywhere in the Rules. Rather, it is to be found in the pro-forma application form, described as FLR(M) Application Form (E version 04/204). This document consists of 52 relatively dense pages and is divided into 14 Sections. In Section 12, under the rubric of "Documents", it is stated:

> *"If you are applying as an unmarried or same-sex partner, or if you answered no to question 5.1 and are applying for an extension of stay although you have completed or nearly completed two years leave to enter or remain in the UK as a partner, in addition to the relevant documents in sub-section 12(A) you must provide the following documents: …*
>
> > *six items of correspondence addressed to you and your partner at the same address as evidence that you have been living together during the past two years. See Note 9".*

Note 9 follows immediately, stating:

> *"The items of correspondence should be addressed to you jointly or in both your names. If you do not have enough items in your joint names, you may also provide items addressed to each of you individually if they show the same address for both of you …*
>
> *Examples of acceptable items are listed below. The documents provided must be originals …*
>
> *The dates of the items of correspondence should spread evenly over the whole two years. They should be from at least three different sources …*
>
> *Please give an explanation on a separate sheet if you cannot provide six items; if the items are not addressed to both of you; or if they do not cover the two year period".*

There follows a list of "*Examples of acceptable items of correspondence"*. Most of the illustrations which follow do not properly attract the appellation of "*correspondence*": bank statements, building society savings books, council tax bills, electricity and/or gas bills or statements, water rates bills or statements, mortgage statements/agreement, tenancy agreement and telephone bills or statements.

12. The excerpts from Form FLR(M) reproduced above belong to page 45 of the document. Also of relevance is a short passage under the heading "Final Checks", on page

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"If you are unable to send us any of the documents specified in section 12, which are relevant to your application, or if you are unable to provide originals, have you given an explanation and said when you will be able to send them?"

In the case of this Applicant, the small box adjacent to this passage was not ticked. We find this unsurprising, having regard to the confusing and ambiguous nature of the language used in the question, which could reasonably be understood by many to convey that it applies only if a requisite document is (or requisite documents are) unavailable at present but can be provided at a later date. Furthermore, there is no provision within the 52 page form for providing an explanation for non-inclusion and/or stating when provision will become possible. While, as appears above, Section 12 contemplates the use of *"a separate sheet"* in certain eventualities, the language used here does not accord with the "Final Checks" passage reproduced above.

13. The sheet anchor in the submissions of Mr Ahmed on behalf of the Applicant is the decision of the Court of Appeal in Ishtiaq v Secretary of State for the Home Department [2007] EWCA Civ 386. The Appellant in this case made an application under the Rules for indefinite leave to remain in the United Kingdom *qua* victim of domestic violence. The requirements prescribed in the Rules did not include the provision of any specified documentary evidence. The application was refused on the basis of the Appellant's inability to provide evidence in the form of one or more of the documents specified in the Secretary of State's Immigration Directorate Instructions "(IDIs)". We interpose the observation that an IDI is an instrument made by the Secretary of State pursuant to paragraph 1(3) of Schedule 2 to the Immigration Act 1971.

14. The Secretary of State's defence included in particular reliance on one of the four express requirements set out in the Rules, namely that the applicant:

"(iv) is able to produce such evidence as may be required by the Secretary of State to establish that the relationship was caused to permanently break down before the end of that period as a result of domestic violence".

Rejecting this argument and allowing the appeal, Dyson LJ, delivering the judgment of the court, stated:

"32. If it had been intended that applicants could only prove that they have been the victims of domestic violence by producing documents of the kind specified in the IDI, this could have been achieved easily enough in the rule. One way of doing it would have been to specify the necessary documents in the rule itself. This is the technique that was adopted in a different context in section 88 of the 2002 Act, which provides that a person may not appeal against an immigration decision which is taken on the grounds that he (or a person of whom he is a dependant) does not have an "immigration document of a particular kind". Section 88(3) defines "immigration document".

33. Another way of doing it would have been to state in terms that an application may succeed only if the applicant produces one or more of the documents specified in the IDIs or similar instructions issued by the Secretary of State to caseworkers. In that way, it would have been clear that the decision as to what kind of evidence to require was taken out of the hands of the caseworkers. If it had been done in either of these ways, Parliament would have had the opportunity to consider the point when scrutinising the Rules. It might not have approved a rule which took away from the caseworker the discretion to decide in the particular case what evidence to require for the purposes of para 289A(iv), a

discretion whose exercise would be susceptible to review on appeal: see section 86(3)(b) of the 2002 Act. The exercise of discretion in formulating policy in the shape of instructions such as the IDIs is not susceptible to appeal, although I accept that it could be the subject of challenge by way of judicial review.

34. In view of the purpose of para 289A, and since subparagraph (iv) does not clearly provide that an applicant may only prove the necessary facts by producing evidence of the kind prescribed by the Secretary of State in instructions to caseworkers, I would hold that it does not have that effect."

The court further held that the relevant parts of the IDIs did not have the effect of inflexible prescription. On the contrary, the provision of the Rules quoted above conferred a discretion on the decision maker: see [39].

15. Furthermore, we consider the decision of the Supreme Court in R (Alvi) v Secretary of State for the Home Department [2012] UKSC 33 to be in point. This held that any requirement in immigration guidance or codes of practice which, if not satisfied by the migrant, would result in an application for leave to enter or remain in the United Kingdom being refused is tantamount to a "rule" within the meaning of Section 3(2) of the 1971 statute. Accordingly, if not laid before Parliament, it does not have the quality of law. See in particular per Lord Hope at [41]:

"A contrast may be drawn between the rules and the instructions (not inconsistent with the rules) which the Secretary may give to immigration officers under paragraph 1(3) of Schedule 2 to the 1971 Act. As Sedley LJ said in ZH (Bangladesh) v Secretary of State for the Home Department [2009] Imm AR 450, para 32, the instructions do not have, and cannot be treated as if they possessed, the force of law. The Act does not require those instructions or documents which give guidance of various kinds to caseworkers, of which there are very many, to be laid before Parliament. But the rules must be. So everything which is in the nature of a rule as to the practice to be followed in the administration of the Act is subject to this requirement. Resort to the technique of referring to outside documents, which the Scrutiny Committee can ask to be produced if it wishes to see them, is not in itself objectionable. But it will be objectionable if it enables the Secretary of State to avoid her statutory obligation to lay any changes in the rules before Parliament."

See also [62]. Lord Dyson, with whom Lord Hope agreed, offered the following formulation at [94]:

"In my view, the solution which best achieves these objects is that a rule is any requirement which a migrant must satisfy as a condition of being given leave to enter or leave to remain, as well as any provision "as to the period for which leave is to be given and the conditions to be attached in different circumstances" (there can be no doubt about the latter since it is expressly provided for in section 3(2)). I would exclude from the definition any procedural requirements which do not have to be satisfied as a condition of the grant of leave to enter or remain. But it seems to me that any requirement which, if not satisfied by the migrant, will lead to an application for leave to enter or remain being refused is a rule within the meaning of section 3(2). That is what Parliament was interested in when it enacted section 3(2). It wanted to have a say in the rules which set out the basis on which these applications were to be determined"

We consider that this decision applies *a fortiori* to a requirement of this species introduced by the mechanism of an application form. We note that the issue of the interplay between the Rules and IDI's has arisen again most recently in R (Ali and Bibi) v Secretary of State for the Home Department [2015] UKSC 68, where an incompatibility between the two regimes was identified.

16. We construe the effect of the decisions in Ishtiaq and Alvi to be, by logical extension, that the Secretary of State cannot lawfully augment or modify any particular regime or compartment within the Immigration Rules by the purported introduction of a requirement of the grant of leave to enter or remain in the United Kingdom via the mechanism of an application form. The fundamental reason for this is that it lacks the necessary parliamentary scrutiny required by section 3(2) of the 1971 statute. In short, as we stated in our *ex tempore* judgment, the "six items of correspondence" stipulation does not have the quality of law or the character of an Immigration Rule in the sense set out in Alvi at [62] and [94].

17. Furthermore, the effect of both the Respondent's decision in this case and the submissions advanced by her counsel is that the stipulation is not treated by caseworkers as mere policy guidance. It is, rather, applied as a rigid condition *sine qua non*. Our primary conclusion, expressed above, is that this is not a legally effective requirement. If this conclusion is wrong, we consider, in the alternative, that the impugned decision is vitiated on the ground that, at its height, the "six items" requirement did not prescribe an inflexible condition but was, rather, an expression of policy guidance to caseworkers. However, it was wrongly construed by the decision maker as an inflexible condition *sine qua non*, thereby precluding the exercise of discretion and importing a fetter in plain contravention of the well known British Oxygen principle: see British Oxygen Company Limited v Minister of Technology [1971] AC 610.

The English Language Qualification Issue

18. The third of the reasons proffered for refusing the Applicant's application was that evidence of the requisite English Language qualification had not been provided: see [3] above. Paragraph 284 of the Rules, under the rubric of "Requirements for an extension of stay as the spouse or civil partner of a person present and settled in the United Kingdom", begins with the words reproduced in [4] above, followed by 11 subparagraphs some of which are broken down into sub-subparagraphs. We calculate that there are 18 requirements in total, arranged in conjunctive terms. In the context of the third of the refusal reasons the relevant provision is subparagraph (ix)(a), which states:

> *"the applicant provides an original English Language test certificate in speaking and listening from an English Language test provider approved by the Secretary of State for these purposes, which clearly shows the Applicant's name and the qualification obtained (which must meet or exceed level A1 of the common European framework of reference) unless …".*

This is followed by three specified exceptions, of no moment in this context.

19. In Section 5 of the completed Form FLR(M) the Applicant stated that she had been lawfully present in the United Kingdom from 13 March 2012 (some two years previously) in accordance with a spousal visa. It is common ground that in order to secure this visa the Applicant must have provided evidence of the English Language qualification in the terms specified in paragraph 284 (ix)(a) of the rules. In answering the relevant question in Section 8 of the Form the Applicant stated, in terms, that having been granted an initial period of two years leave to remain in the United Kingdom she had reached the stage of applying for an extension, with a view to undertaking the knowledge of life in England test and securing this further qualification. Mr Ahmed submitted, without challenge, that this is the normal pattern and sequence in cases of this kind. The Applicant did not provide details of her English language qualification or attach the relevant certificate.

20. We construe paragraph 284 (ix)(a) of the Rules, applying the principles rehearsed in [7] above in the following way. We note in particular that there is no requirement in this provision of the Rules that the English language qualification be of any particular vintage. In addition, the effect

of E-LTRP 4.1 of Appendix FM is that the specified evidence to be provided does not include proof of the requisite English language test in any case where this has been provided in the context of "a previous application for leave as a partner or parent". Furthermore, we highlight that the Secretary of State is indivisible. There is no suggestion that the Applicant's English language certificate had expired or had been invalidated. It had been accepted by the indivisible Secretary of State some two years previously. In our judgment, on the particular facts of this case, this was sufficient to satisfy paragraph 284 (ix)(a). This construction is supported by the standards of common sense, reasonableness and flexibility emphasised by Lord Brown in Mahad. Given the material facts which we have identified, we are unable to ascertain any intention underpinning this provision of the Rules that this Applicant should suffer the draconian penalty of refusal of her application in these circumstances.

The Jurisdictional Issue

21. The hearing of this substantive application for judicial review was conducted on 20 November 2015. At the conclusion of the hearing, we announced that we would adjourn for several minutes and then give judgment *ex tempore*. Upon returning to the courtroom, a moment of mild drama unfolded. Counsel for the Respondent, Mr Karim, informed the panel that he had instructions to withdraw the decision under challenge. In the exchanges with the bench which followed, Mr Karim submitted that the Tribunal no longer possessed jurisdiction to give judgment. We rejected this submission, for the following reasons. First, it is unsupported by authority or principle. Second, it is inconsistent with the public law character of judicial review proceedings. Third, it finds no support in any of the provisions of the Tribunal Procedure (Upper Tribunal) Rules 2008. On the contrary, it is confounded by Rule 17 which provides, in material part:

> "*(1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it - ……*
>
> *(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.*"

22. The *coup de grace* to Mr Karim's submission is delivered by the decision of the House of Lords in R v Secretary of State for the Home Department, ex parte Salem [1999] AC 450. In that case, the issue was whether the Appellant, an unsuccessful asylum applicant, had been lawfully denied income support. One month prior to the scheduled hearing in the House of Lords, the Treasury Solicitor informed the Judicial Office that the Appellant's appeal to a special adjudicator had succeeded, with the result that he would receive back payment of the benefits in question. The question which arose was whether the appeal was thereby rendered academic. The House provided the following guidance, in the speech of Lord Slynn, at page 456g/457c:

> *"My Lords, I accept, as both counsel agree, that in a cause where there is an issue involving a public authority as to a question of public law, your Lordships have a discretion to hear the appeal, even if by the time the appeal reaches the House there is no longer a lis to be decided which will directly affect the rights and obligations of the parties inter se. The decisions in the Sun Life case and Ainsbury v. Millington (and the reference to the latter in Rule 42 of the Practice Directions Applicable to Civil Appeals (January 1996) of your Lordships' House) must be read accordingly as limited to disputes concerning private law rights between the parties to the case.*
>
> *The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example*

(but only by way of example) when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future"

The theme which shines brightly in this short passage is that of the public law arena. In our *ex tempore* ruling at the conclusion of the substantive hearing, we rejected the Respondent's submission on this basis.

23. For this combination of reasons we are satisfied that the Tribunal retains jurisdiction to adjudicate on the issues raised by the Applicant's challenge, notwithstanding the Respondent's belated surrender. Judicial review entails no *lis inter-partes and* has an important educative function. We consider that the issues ventilated in these proceedings are of sufficient importance to warrant the promulgation of a judgment which will be available to all. For the record, having considered Mr Karim's submission, we proceeded to give judgment *ex tempore*.

Order

24. The Applicant succeeds and we make an Order quashing the Respondent's decision dated 02 July 2014.

25. The effect of this quashing order is that the Respondent will be obliged to undertake a full reconsideration of the Applicant's application, duly guided by this judgment. This exercise will also engage the public law obligation to take into account all material considerations and evidence, which will include anything new or additional that may be provided by the Applicant. We trust that avoidable future litigation will not eventuate.

Costs

26. The Applicant is entitled to her costs, which will be summarily assessed in default of agreement. The Respondent has a period of 14 days, running from 20 November 2015, to make representations in writing in response to the Applicant's costs schedule.

Permission to Appeal

27. We identify no issue of sufficiently elevated importance to warrant the grant of permission to appeal to the Court of Appeal.

Signed :

Leonard McCloskey.

The Honourable Mr Justice McCloskey
President of the Upper Tribunal, Immigration and Asylum Chamber

Dated: **26 November 2015**

Applicant's solicitors:
Respondent's solicitors:
Home Office Ref:
Decision(s) sent to above parties on:

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 question 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 given (Civil Procedure Rules Practice Direction 52D 3.3(2)).