Upper Tribunal
(Immigration and Asylum Chamber)

Safi and others (permission to appeal decisions) [2018] UKUT 00388 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 October 2018	.....

Before

THE HON. MR JUSTICE LANE, PRESIDENT
UPPER TRIBUNAL JUDGE DAWSON

Between

ALI AHMED SAFI
KHALIL ULLAH
& SEVEN OTHERS
(ANONYMITY DIRECTIONS NOT MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants
(other than Khalil Ullah): Mr D Seddon & Mr P Jorro, instructed by Duncan Lewis & Co, Solicitors (Harrow Office)
For Khalil Ullah: Mr C Jacobs, instructed by Hammersmith & Fulham Law Centre
For the Respondent: Mr A Payne, instructed by the Government Legal Department

(1) It is essential for a judge who is granting permission to appeal only on limited grounds to say so, in terms, in the section of the standard form

document that contains the decision, as opposed to the reasons for the decision.

(2) It is likely to be only in very exceptional circumstances that the Upper Tribunal will be persuaded to entertain a submission that a decision which, on its face, grants permission to appeal without express limitation is to be construed as anything other than a grant of permission on all of the grounds accompanying the application for permission, regardless of what might be said in the reasons for decision section of the document.

DECISION AND REASONS

A. Introduction

1. On 6 February 2000, the appellants, and a number of others, hijacked a commercial aircraft in Afghanistan and forced the pilots to fly it to the United Kingdom, where the aircraft arrived on 7 February 2000.

2. The legal proceedings in the United Kingdom that resulted from this event have been both various and protracted. For present purposes, we are concerned with a determination of the First-tier Tribunal, promulgated on 7 July 2015, in which that Tribunal held that the appellants were excluded from the 1951 Refugee Convention and, accordingly, not entitled to the status of "refugee" within the meaning of that Convention, because of the operation of Article 1F(b) thereof.

3. Article 1F(b) provides that the Convention shall not apply to any person "with respect to whom there are serious reasons for considering that … he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee".

B. Applications for permission to appeal

4. Each of the appellants applied for permission to appeal to the Upper Tribunal against the First-tier Tribunal's determination. All of them advanced four grounds of appeal; but Khalil Ullah also advanced an additional ground.

5. In essence, ground 1 contended that the acquittal of the appellants on criminal charges brought in respect of the hijacking meant that on a "principled approach", their exclusion by reason of Article 1F(b) was wrong. Ground 2 contended that the First-tier Tribunal had erred in law in relation to the defence of duress. Ground 3 said that the First-tier Tribunal had erred in law in finding that the hijacking of the aircraft was non-political. Ground 4 challenged the lawfulness of the First-tier Tribunal's rejection of the appellants' submissions regarding expiation.

6. As well as advancing an additional reason why the First-tier Tribunal had erred in relation to ground 4, based on his "complex medical problems", Khalil Ullah advanced an additional ground, also based on his medical condition, which was that the First-tier Tribunal erred in failing to apply discretion in his case.

C. The effect of the grant of permission to appeal by the First-tier Tribunal

7. The purpose of the hearing in the Upper Tribunal on 12 October 2018 was to determine the scope of the grant of permission to appeal, made by the First-tier Tribunal on 18 January 2018 and, depending on our conclusions on that issue, to determine whether permission to appeal should be granted on any grounds on which the First-tier Tribunal had refused permission.

8. After the usual headings, the First-tier Tribunal's decision of 18 January 2018 read as follows:-

> "**Application by Appellants**
>
> **Permission to Appeal is Granted**
>
> ---
>
> **REASONS FOR DECISION** (including any decision on extending time)
>
> 1. The Appellants, Afghans, were all hijackers of an airline (sic). They were acquitted of criminal charges on appeal to the Court of Appeal on the basis that the jury were misdirected as to what constituted duress.
>
> 2. The Appellants above are 9 of the original 27.
>
> 3. They had all claimed asylum and the Secretary of State claimed that they were excluded from the Refugee Convention as Article 1F(b) applied to them.
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> 4. The First-tier Tribunal heard the appeals on three separate occasions to determine discrete issues but directed at the conclusion of the third that the date of promulgation of the last, 21st Decision [sic] 2017 should be taken as the date to trigger applications for permission to appeal. The applications are thus in time.
>
> 5. The Appellants seek permission to appeal in relation to only one of the decisions of the First-tier Tribunal, that taken on 7th July 2015, which found that the Appellants are excluded from the Refugee Convention. The Appellants were successful on the first occasion (October 2013) in relation to A.3 of the ECHR.
>
> 6. While I am not persuaded that there is an arguable error of law in the First-tier Tribunal decision in relation to duress or its finding that the "crime" was not a political crime, I do consider it arguable that the Tribunal may have erred in its consideration of whether Article 1F(b)

was applicable at all given that the Appellants had all been acquitted after trial.

Signed

Judge of the First-tier Tribunal
Date: 18th January 2018"

9. What is the scope of the grant of permission by the First-tier Tribunal? The fact that this question needs to be asked is, in itself, regrettable. It is made worse by the fact that it has caused there to be further delay in the resolution of legal proceedings that have been on-going for the best part of two decades.

10. The appellants contend that the First-tier Tribunal has granted them permission on all the grounds that they respectively advanced. The respondent submits that permission has been granted only on ground 1.

D. Procedure Rules

11. Rule 34 of the Tribunal Procedure (First-tier Tribunal) (Immigration & Asylum Chamber) Rules 2014 provides as follows:-

> "**Tribunal's consideration of an application for permission to appeal to the Upper Tribunal**
>
> 34.—(1) On receiving an application for permission to appeal the Tribunal must first consider whether to review the decision in accordance with rule 35.
>
> (2) If the Tribunal decides not to review the decision, or reviews the decision and decides to take no action in relation to the decision, or part of it, the Tribunal must consider whether to give permission to appeal in relation to the decision or that part of it.
>
> (3) The Tribunal must send a record of its decision to the parties as soon as practicable.
>
> (4) If the Tribunal refuses permission to appeal it must send with the record of its decision—
>
> (a) a statement of its reasons for such refusal; and
>
> (b) notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the manner in which, such application must be made.
>
> (5) The Tribunal may give permission to appeal on limited grounds, but must comply with paragraph (4) in relation to any grounds on which it has refused permission."

12. So far as relevant, the Tribunal Procedure (Upper Tribunal) Rules 2008 provide as follows:-

> "**Application to the Upper Tribunal for permission to appeal**

21.—(1) …

(2) A person may apply to the Upper Tribunal for permission to appeal to the Upper Tribunal against a decision of another tribunal only if—

(a) they have made an application for permission to appeal to the tribunal which made the decision challenged; and
(b) that application has been refused or has not been admitted or has been granted only on limited grounds.

…"

E. Guidance Note 2011 No. 1

13. Blake J, the first President of the Immigration and Asylum Chamber of the Upper Tribunal, issued Guidance Note 2011 No. 1: Permission to appeal to UTIAC. Paragraph 25 of the Guidance Note reads as follows:-

"Limited or restricted grounds

25. Whilst both the FtT when dealing with a "first application" for PTA (FtT Rules, r.25(5)) and the UT when dealing with a "second application" for PTA (UT Rules, r.22(4)) may restrict the grant of permission to specified grounds, the right of the applicant to apply to the UT for permission to appeal on other grounds and its practical consequences lead to the pragmatic suggestion that such a course is frequently more trouble than it is worth. A judicial observation on the merits of other grounds that have not caused permission to be granted may be of value to the judge seised of the appeal, who will be able to direct the parties to those grounds which are considered to have arguable merit. If nevertheless it is decided permission should only be granted or limited [on] restricted grounds, the Judge should state this expressly (and precisely), so that it is clear that he or she contemplates the possibility of the applicant applying to the UT in respect of the other grounds."

14. Also, of relevance are the following paragraphs:-

"The grounds of appeal

29. Where permission to appeal is being refused on competently drafted grounds, it is desirable that the decision and the reasons for it should engage, however briefly with those grounds. The maxim that an appellant is entitled to know why he or she has won or lost also has utility for PTA applications. There is a limit to what is required if grounds are overlengthy, rambling, incoherent and imprecise, but there should be some attempt to respond to the case as presented. What is called for is not description of the grounds, but evaluation."

…

31. Resort to very generalised or formulaic reasons or conclusions for refusing PTA do not give assurance that the point has been understood and engaged with. In an 11 February 2010 speech to the UTIAC judiciary the President highlighted the need when dealing with PTAs to respond to the grounds of appeal and to identify succinctly and clearly why PTA has been granted or refused."

15. The references in paragraph 25 of the Guidance Note to the First-tier Tribunal Rules were to a former version of those Rules. The references now need to be read to the equivalent provisions of the 2014 Rules. However, the points made in paragraphs 25, 29 and 31 of the Guidance Note remain as valid today as when they were issued.

16. The reason why paragraph 25 of the Guidance Note made the "pragmatic suggestion" regarding granting permission on limited grounds is that the making of a renewed application for permission to appeal on the grounds which the First-tier Tribunal has refused will, in practice, often delay the progress of the appeal which, in view of the (albeit limited) grant by the First-tier Tribunal, has been set in motion. A physical (i.e. paper) file cannot be in two places at once. Thus, if the file is before an Upper Tribunal judge who is considering the application in respect of the "refused" grounds, the Tribunal's administrative staff will, in practice, need to await a result of that judge's decision before listing the appeal for hearing.

17. Where permission is, nevertheless, intended to be granted only on limited grounds, paragraph 25 of the Guidance Note states that this should be expressly and precisely articulated.

18. As the present case demonstrates, one important reason for requiring clarity and precision in this regard is to avoid the need for professional and judicial time and effort to be expended upon deciding the scope of the grant. It is, to say the least, difficult for the parties and the judges of the Upper Tribunal to prepare for a hearing in the Upper Tribunal if the ambit of the case to be advanced/resisted is unknown.

19. A second reason, which paragraph 25 expressly articulates, is that a person who is being granted permission by the First-tier Tribunal only on limited grounds needs to know that fact. This is the purpose of rule 34(4)(b) and (5) of the 2014 Rules, whereby the person concerned must be notified by the First-tier Tribunal of his or her right to make an application to the Upper Tribunal for permission to appeal on the refused grounds. This also means that the First-tier Tribunal's administrative staff need to see whether the judge's grant of permission is a limited one, in order to send out the required notification.

F. Case law

20. In Ferrer (limited appeal grounds; *Alvi*) [2012] UKUT 00304 (IAC), difficulties arose in respect of a grant of permission that did not make it clear whether permission was granted only on limited grounds. The Upper Tribunal said this:-

"22. It is necessary at this stage to make two general points. First, as the present case illustrates, if on an application for permission to appeal the First-tier Tribunal, Immigration and Asylum Chamber intends to grant permission only in respect of certain of the grounds, then the judge considering that application should make it abundantly plain that this is so, both in his or her decision under rule 25(5) and by ensuring that the Tribunal's administrative staff send out the proper notice (currently IA68) so as to comply with rule 25(5). It should also be noted that rule 25(4)(a) requires "written reasons for a decision under this rule", which means that written reasons are required both for granting an application on particular grounds and for refusing the application on particular grounds."

23. Secondly, as a practical matter, the First-tier Tribunal should consider carefully the utility of granting permission only on limited grounds. Given that the effect of any grant of permission to the Upper Tribunal is to set in train proceedings on the case in question in the Upper Tribunal, a grant of permission on limited grounds will not, in practice, often be as helpful to the parties or to the Upper Tribunal as would a general grant of permission by reference to all of the applicant's grounds, which nevertheless expressly identifies the ground or grounds that are considered by the First-tier Tribunal to have the strongest prospect of success. In this way, the First-tier Tribunal identifies the likely ambit of the forthcoming Upper Tribunal proceedings, which – if that Tribunal concurs – can then form the backdrop for the Upper Tribunal's subsequent case management directions under rule 5 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the Upper Tribunal Rules"). It should also be noted that rule 15(1)(a) and (b) of those Rules expressly enables the Upper Tribunal to give directions as to the issues on which it requires evidence or submissions and the nature of the evidence or submissions it requires."

21. As is apparent, in Ferrer the Upper Tribunal was dealing with the predecessors of the 2014 Rules. Nothing of materiality turns on this, however.

22. In Secretary of State for the Home Department v Rodriguez; Mandalia and Patel v SSHD [2014] EWCA Civ 2, the Court of Appeal had to interpret the scope of permission to appeal from the First-tier Tribunal to the Upper Tribunal, as granted by the Upper Tribunal. In the case of Mr Mandalia, it became important to decide whether the Upper Tribunal had granted permission on one or both of two grounds, since this impacted upon the jurisdiction of the Court of Appeal.

23. The operative parts of the Upper Tribunal's permission decision in Rodriguez were as follows:-

"Permission to appeal is granted

Reasons (including any decision on extending time)

The Tribunal is bound by the Court of Appeal authority, and therefore the challenge to the decision of that court in *Alam* [regarding the Secretary of State's evidential flexibility policy] cannot avail the appellant before the Tribunal. However, the decision in *Ahmadi* [2012] UKUT 00174 … is of clear

relevance in this case and in respect of that point in particular permission is granted."

24. At the substantive appeal before the Upper Tribunal, the judge dealing with the matter took the view that the grant of permission had been limited to the *Ahmadi* point (that is to say, the validity of a removal decision made under section 47 of the Immigration, Asylum and Nationality Act 2006). Giving the judgment of the court, Davis LJ said as follows:-

> "72. The position of Mr Gullick [Counsel for the Secretary of State] is straightforward. He says that the Order of Upper Tribunal Judge Allen of 9 October 2012 is to be read as a whole. By it, he submits, by reference to the Reasons there set out, permission to appeal was limited only to the *Ahmadi* ground. No permission to appeal was granted, he says, in respect of what may be styled the Evidential Flexibility policy/*Alam* ground. That, accordingly, was the way in which judges of the Upper Tribunal – and, in particular, Upper Tribunal Judge Martin – subsequently approached matters. For the purposes of s.13 of the Tribunals, Court and Enforcement Act 2007, so the argument goes on, an application for permission to appeal is an excluded decision. Consequently, there is no right of appeal available, since an appeal to this court on a point of law can only be brought from a decision of the Upper Tribunal which is not an excluded decision: see s.13(1) and (8) of the 2007 Act.
>
> 73. The logic of the argument is impeccable. Nor does Mr Mahmood, appearing for Mr Mandalia, dispute that logic. But his, no less straightforward, argument is to dispute the premise. He says that, on its true interpretation, the Order of Upper Tribunal Judge Allen was *not* limited to the *Ahmadi* ground.
>
> 74. Having considered the arguments, I agree with Mr Mahmood.
>
> 75. It is true that, as Mr Gullick emphasised, a number of Upper Tribunal judges thereafter in this case have construed the permission as so limited. But while of course one should have regard to those views, they cannot be decisive on the point of interpretation arising.
>
> 76. There is a degree of ambiguity in the Order as made. The actual grant of permission, taken on its own, is unrestricted: "permission to appeal is granted". That plainly favours Mr Mahmood's stance. Turning, however, to the Reasons, the first sentence is, I would accept, indicative of the Upper Tribunal judge being flatly against what may be called the *Alam* point. But equivocation is then introduced in the second sentence by use of the phrase "in particular": that connotes a wider grant of permission than just on the *Ahmadi* point. Mr Gullick's argument in effect involves rewriting the second sentence of the Reasons, either so as notionally to delete the words "in particular" or so as to have it read "in respect of that particular point". Moreover, the written grounds of appeal before the judge were extensive as to the asserted application of the policy: and Mr Mahmood reminded us that sometimes judges, where minded to give leave on one ground, may be more receptive, in consequence, to giving leave on other grounds. In this regard he referred us, if any authority were needed, to the Tribunal

determination in *Ferrer* [2012] UKUT 00304 (IAC), and in particular to the observations made in paragraphs 22 and 23 of that determination. He suggested that it is quite possible that Upper Tribunal Judge Allen may have had that approach in mind.

77. This is not at all straightforward. But overall, in the light of the wording of the Order read as a whole, I incline to think that it is to be construed as an unrestricted grant of permission. In any event, if there is ambiguity arising from the language of the Reasons given then I think that such ambiguity is to be resolved in favour of the applicant: particularly where the opening part of the Order concerning the actual grant of permission was unqualified.

78. This court announced, after hearing oral argument on the point at an early stage of the hearing before us, that the application to set aside the grant of permission was refused. The foregoing represent my reasons for being party to that decision.

79. It was also suggested to us that general guidance might be given by this court as to how limited grants of permission to appeal are to be framed. I would decline that invitation. To the extent that general guidance is needed for tribunals, it can be found in the Guidance Note 2011/No 1, as amended, issued by Blake J (President) in 2011.

80. I would, however, add this. The guiding consideration must always be, where it is intended that a grant of permission to appeal is to be limited or restricted, that the grant is unambiguously clear. It thus should, in my view, be regarded as good practice to be followed in such cases that the wording of the actual grant itself is explicit that the permission to appeal is limited or restricted: for example "permission is granted, limited to grounds 1 and 4 [or as the case may be]..." or "permission is granted, limited as hereafter set out..." It is not good practice to give an ostensibly unlimited grant and then to impose limitations in the Reasons thereafter given in the order: indeed such a procedure may only result in the kinds of problems thrown up in the present case. Ultimately, as Blake J said in his Presidential Guidance: "If nevertheless it is decided permission should only be granted on limited or restricted grounds, the judge should state this expressly (and precisely)....". That is guidance to be followed."

25. In R (Behary) v Secretary of State for the Home Department and Another [2016] EWCA Civ 702, the Court of Appeal considered the scope of an order granting permission to bring judicial review:-

"34. Mr Malik submits that the judge erred in concluding that His Honour Judge Gilbart QC, who granted permission on the papers, had limited the grant of permission. In my judgment he is correct in that submission but there is no substance in the underlying argument. I would therefore refuse permission to appeal on this ground.

35. The order made by Judge Gilbart QC when granting permission was "Permission is hereby granted". In the observations that followed the judge indicated that he had considered whether there was an arguable case relating to the decision refusing Mr Ullah's application. He continued: "In my judgment there is an arguable case, based upon the combination of grounds 1 and 2." Ground one was a *de minimis*

argument, i.e. that a narrow failure to comply with the Immigration Rules in question should be ignored. Ground 2 related to the meaning of "established presence". It was in those circumstances that the Home Office contended, and the judge accepted, that despite the generality of the order made by Judge Gilbart QC permission was in fact limited to those two grounds.

36. A similar question arose in *Secretary of State for the Home Department v Rodriguez* [2014] EWCA Civ 2, which was not cited to the judge when she considered this issue, in the context of the grant of permission to appeal by the Upper Tribunal to the Court of Appeal. Davis LJ dealt with the question at para 76 and following. The order was unrestricted, "permission to appeal is granted", but the reasons focussed on only one ground. The task was to construe the order as a whole. Where the opening words of the order suggested an unqualified grant of permission and what followed in the reasons was ambiguous, the ambiguity should be resolved in favour of the applicant: para 77.

37. It is commonplace to see an order granting permission stating that it is limited to one or only some of the grounds advanced. It is also commonplace to see the observations following what appears to be a general grant of permission explicitly limiting the grounds: "For these reasons I grant leave on grounds x, y and z only". Equally, it is not uncommon to see in observations an indication that the judge considers only some of the grounds to have potential merit but nonetheless to give general permission. Although in this case it is apparent that Judge Gilbart QC focussed on two of the grounds, the overall position was ambiguous and should be resolved in favour of Mr Ullah."

G. Discussion

(a) Construing the grant of permission

26. In the light of the Court of Appeal judgment in Rodriguez, we consider that the grant of permission in the present case falls to be construed as general or unlimited. In other words, the First-tier Tribunal granted permission on each of the four grounds, in respect of the appellants other than Khalil Ullah, and on all five of Khalil Ullah's grounds.

27. As can be seen from paragraph 8 above, the standard form of document produced by the First-tier Tribunal falls into two discrete sections. First. there is the decision itself, which, in this case, reads "**Permission to Appeal is Granted**". The decision is separated from the second part by a black horizontal line. The second section is described as "**REASONS FOR DECISION**". On its face, therefore, the second section distinguishes itself from the first section: the first being the decision and the second being the reasons for that decision.

28. It is clearly significant that, in the reasons for decision section of the document, permission to appeal is categorically stated to be "granted"; and that there are no words of limitation in that section. Given the terms of the decision, Rodriguez makes it plain that any ambiguity in the reasons which follow the decision fall to be resolved in favour of the appellants.

29. This means that Mr Payne's attempt, on behalf of the respondent, to argue that the document, taken as a whole, amounts only to a limited grant, faces considerable difficulties.

30. The high point of Mr Payne's argument is that, in paragraph 6 of the reasons, the First-tier Tribunal Judge stated, in terms, that she was "not persuaded that there is an arguable error of law" in the First-tier Tribunal's decision regarding duress and regarding the "crime" not being a political one. Mr Payne submitted that since permission cannot be granted unless there is an arguable error of law, the judge must be taken to have excluded grounds 2 and 3.

31. It is not, in fact, the case that permission to appeal cannot be granted to the Upper Tribunal unless the granting judge is satisfied that there is an arguable error of law in the decision of the First-tier Tribunal. Section 11(1) of the Tribunals, Courts and Enforcement Act 2007 confers a right of appeal "on any point of law arising from a decision", other than an excluded decision. It is, therefore, possible for permission to be granted, even where it is not considered by the granting judge that the First-tier Tribunal has arguably made a legal error, if the point of law in question is, in the granting judge's view, of such significance as to make it desirable for the Upper Tribunal to become seized of the matter.

32. Having said this, it is plain that, in the present case, the First-tier Tribunal Judge did not consider grounds 2 and 3 to be of such a nature. Nevertheless, the fact remains that the First-tier Tribunal Judge had properly invoked section 11(1) by granting permission on ground 1. In those circumstances, there would have been nothing wrong with the judge formally granting permission on all grounds, notwithstanding that she considered certain of them to be independently incapable of giving rise to an appeal under section 11(1) of the 2007 Act.

33. Indeed, as we have seen, that is the plain thrust of paragraph 25 of the Guidance Note. It is open to a judge, in these circumstances, to grant permission generally even though he or she might think particular grounds are not, in themselves, sufficiently arguable. Indeed, much of paragraph 25 would be rendered a dead letter if the position were otherwise.

34. In seeking to distinguish Rodriguez from the present case, Mr Payne laid emphasis upon the significance attributed by the Court of Appeal to the words "in particular" in the Upper Tribunal's grant of permission in that case. He correctly pointed out that no such words were used by the First-tier Tribunal Judge in the present case.

35. Whilst that is true, we do not consider it materially affects the position. As we have said, given that the decision to grant permission was, on its face, unrestricted, the "reasons" section of the document would need to be unambiguous in order to contradict that general grant. That is simply not the case.

36. The appellants derive additional support, we find, from the fact that the First-tier Tribunal Judge said nothing at all about ground 4 (expiation) or about Khalil Ullah's ground 5. This strengthens the inference that, in

saying what she did about grounds 2 and 3, the First-tier Tribunal Judge was merely opining about the relative merits of the grounds, so as to give an indication to the appellants of what might be worth concentrating upon in the Upper Tribunal.

37. We therefore conclude that the proper construction of the grant of permission in the present case is that it is entirely unrestricted. At the conclusion of the hearing on 12 October, we informed the parties of our conclusion, which meant we did not require to hear submissions on whether permission should additionally be granted on grounds 2 to 5.

(b) The requirements to be met when granting permission

38. The time has come when it needs to be clearly stated that it is unacceptable to produce a decision on an application for permission to appeal which is so unclear that it gives rise to the need for judicial interpretation, of the kind we have had to undertake in the present case. A decision on a permission application must be capable of being understood by the Tribunal's administrative staff (for the reasons we have given above); by the parties; and by the tribunal or court to which the appeal lies.

39. What the Court of Appeal said at paragraph 80 of Rodriguez must, henceforth, be followed. If a judge intends to grant permission only on limited grounds, he or she must make that fact absolutely clear.

40. Particularly given the delay and expense that have been occasioned in the present proceedings by the First-tier Tribunal Judge's failure to produce a clear decision, the Upper Tribunal considers that the time has also come to build upon Rodriguez, as follows.

41. Henceforth, it is not to be regarded as merely good practice to do what is set out in paragraph 80 of Rodriguez; we regard it as essential for a judge who is granting permission only on limited grounds to say so, in terms. The place to do so is in the section of the document that contains the decision.

42. There is one point of detail in paragraph 80 with which we would respectfully disagree. We do not consider that it is appropriate to state "Permission is granted, limited as hereafter set out", unless the limitation occurs specifically in the section of the completed document which contains the decision, as opposed to the reasons for that decision; that is to say, in the first and not the second section (see paragraph 27 above).

43. Thus, permission granted on limited grounds should state "Permission is granted, limited to grounds 1 and 4" (as the case may be) or "Permission is granted on grounds 1, 2 and 3 but is refused on grounds 4 and 5" (as the case may be).

44. The "reasons for decision" section is to be construed as just that; i.e. the reasons for the decision which has just been made. The reasons for decision must not include any words that are intended to form part of the

decision. The reasons section is the place where the reasons for refusing permission, either generally or on particular grounds, should be stated, pursuant to the duty imposed on the judge by rule 34(4)(a) of the 2014 Rules or, in the case of the Upper Tribunal, rule 22(1) of the 2008 Rules.

45. The reasons section is also the place where, if and insofar as permission is being granted, the reasons for doing so are "clearly identified" (see paragraph 37 of the Guidance Note). Although paragraph 37 is not reflected in the Procedure Rules of the First-tier Tribunal or the Upper Tribunal, it is plainly necessary in pursuance of the overriding objective to explain to the parties (albeit briefly) why permission has been granted.

46. Henceforth, it is likely to be only in very exceptional circumstances that the Upper Tribunal will be persuaded to entertain a submission that a decision which, on its face, grants permission to appeal without express limitation is to be construed as anything other than a grant of permission on all of the grounds accompanying the application for permission. That is highly likely to be so, regardless of what may be said in the reasons for decision section of the document.

47. Where the judge who has granted permission generally is of the view that certain of the grounds are such that they would not themselves have given rise to a grant of permission, the judge should say so in the reasons for decision section. Some suitable formulations might be along the following lines:-

    (a) "Although I grant permission on all grounds, ground 3 is not, in my view, of sufficient arguable merit as to have justified a grant on that ground alone. The appellant may wish to bear this in mind in preparing his/her case in the Upper Tribunal";

    (b) "Permission is granted on all grounds but, in my view, ground 1 is the strongest and is the reason I have granted permission".

Signed Date
2 November 2018

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber