IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02611/2014

THE IMMIGRATION ACTS

Heard at Birmingham	**Determination & Reasons Promulgated**
On 25 March 2015	**On 13 May 2015**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

TARISAL JOSEPHINE MATAMBANADZO

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Martin, Counsel instructed by RBM Solicitors
For the Respondent: Ms N Smart, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This decision concerns a narrow issue but one of some complexity. It relates only to an issue of legitimate expectation.

2. The appellant, who is a citizen of Zimbabwe, was born on 18 February 1983. She arrived in the UK on 20 December 2003, seemingly as a visitor. Although it is not entirely clear from the chronology, her visa expired in 2004 or 2005, according to the refusal letter.

3. She claimed asylum on 18 March 2010 but that claim was refused. Her appeal against the subsequent immigration decision to remove her was heard by Immigration Judge Birk on 2 June 2010 and the appeal was dismissed.

4. Taking the further history from the determination of First-tier Tribunal Judge Pooler, further representations were made on behalf of the appellant and were treated by the respondent as a fresh claim. A further decision was taken refusing the application for asylum and making a further immigration decision. An appeal against that decision was listed for hearing before the First-tier Tribunal on 20 February 2013. On that date the decision was withdrawn by the respondent and a further decision taken which was the subject of the appeal before Judge Pooler at the hearing on 19 August 2014.

5. One of the grounds of appeal at the hearing before Judge Pooler was that the decision of the respondent was not in accordance with the law on the basis that the appellant had a legitimate expectation that she would be granted asylum. That argument was founded on the following facts.

6. On 20 February 2013 at the hearing before the First-tier Tribunal, when the decision then under appeal was withdrawn, it is said that the Presenting Officer, Ms D. Houghton, had stated on that occasion that asylum would be granted. Contrary to that statement, the respondent had refused the appellant's asylum claim.

7. Judge Pooler concluded that on the evidence before him Ms Houghton did say that the appellant would be granted asylum at that hearing on 20 February 2013. Judge Pooler decided that that ground of appeal was able to be disposed of on the basis that Ms Houghton did not have authority to bind the respondent to grant asylum and that what she said at that hearing did not amount to a promise by a public authority.

8. He then went on to consider the substantive aspects of the appellant's claim in terms of the asserted fear of return to Zimbabwe for political reasons. Applying the decision in Devaseelan [2002] UKIAT 00702 with reference to the earlier dismissal of her asylum claim, he dismissed the appeal on asylum and human rights grounds.

9. The grounds of appeal before the Upper Tribunal, in essence, contend that Judge Pooler erred in concluding that Ms Houghton did not have authority to bind the respondent in terms of a grant of refugee status to her. Reference is made in the grounds to directions requiring Ms Houghton to have filed a witness statement, which was not done. It is argued that the respondent had failed to give an explanation as to what had been said by Ms Houghton despite having been given a reasonable opportunity to do so. It is also said in the grounds that if Ms Houghton could be said to have been acting without authority in terms of the statement that the appellant would be granted asylum, the withdrawal of the earlier decision must also therefore have been without authority. It is contended that it is unfair for

the respondent to be able to "cherry pick" that which suits her in terms of the actions of the Presenting Officer.

The hearing before the Upper Tribunal on 25 March 2015

10. At the hearing before me Mr Smart produced a number of documents. These included two letters dated 2 October 2014 and 15 October 2014 constituting the respondent's 'Rule 24' response to the grounds of appeal. I was informed that these had been sent to the Upper Tribunal, albeit that they had not found their way to the Tribunal's files. There was also a witness statement from a Mr Kelvin Hibbs dated 24 March 2015, he being the senior caseworker to whom Ms Houghton spoke on the day of the hearing before the First-tier Tribunal on 20 February 2013. Copies of various emails were included in the documents produced by Mr Smart, as well as a blank pro forma in relation to withdrawal of decisions.

11. Mr Martin did not object to the production of those documents, albeit that they were not served in advance of the hearing. Similarly, having canvassed the matter with Mr Martin, he did not seek any adjournment, for example for Mr Hibbs or Ms Houghton to be called as witnesses, or for any further information to be provided by the respondent in the light of the information contained in the documents provided on the day of the hearing.

12. Similarly, it was not suggested on behalf of the appellant that the documentary evidence provided by the respondent on the day of the hearing before me could not be taken into account on the issue of whether there was an error of law in the decision of the First-tier Tribunal by reason of that not being evidence that was before the First-tier Tribunal, for example with reference to the decision in E v Secretary of State for the Home Department [2004] EWCA Civ 49.

13. I summarise the submissions of the parties. Mr Martin submitted that it was encumbent on the Secretary of State to have explained the basis on which Ms Houghton indicated that the appellant would be granted asylum. Neither Ms Houghton nor Mr Hibbs state that Ms Houghton did not in fact say that the appellant would be granted asylum, but merely state what their normal practice is. He relied on the fact that Ms Houghton had not provided a statement, despite directions to the effect that she should do so.

14. First-tier Tribunal Judge Pooler had purported to look into the mind of Ms Houghton and investigate the Home Office's position without the necessary evidence. On the day of the hearing before Judge Pooler the pro forma was disclosed but, without more, he should not have concluded that the Presenting Officer did not have authority to indicate that the appellant would be granted asylum. The respondent had been given plenty of opportunity to explain matters. For example, there were letters from the appellant's solicitors asking for refugee status documents on the basis that the question of her refugee status had been decided or resolved

by the respondent, but there was no response from the Secretary of State. It is since February 2013 that the appellant has been under the expectation that she would be granted asylum. That situation prevailed even up until the date of the hearing before the Upper Tribunal, or at least in part. Alternatively, that situation prevailed until August 2014 when the pro forma was produced on the first day of the hearing before Judge Pooler.

15. I was referred to various authorities on the question of legitimate expectation and the factors to be considered. So far as concerns the question of correction of any alleged error, it was submitted that it is relevant to consider whether there was any attempt to rectify any apparent mistake and whether that was done expeditiously.

16. A factor to be taken into account is whether the promise made was in any way qualified, and in this case it was not.

17. Even if it could be said that Ms Houghton had no authority to state that the appellant would be granted asylum, the want of authority is not necessarily determinative. In any event, Judge Pooler was not entitled to find on the information before him that she did not have authority.

18. On a minimum basis, I was invited to conclude that the issue of legitimate expectation was not adequately dealt with by Judge Pooler and that the matter should be remitted to the respondent to reconsider the question of asylum, and if asylum is not granted, to explain why not with reference to the 'promise' made by Ms Houghton.

19. The primary contention however, was to the effect that I should find that the appellant did have a legitimate expectation that she would be granted asylum and that I should direct that some form of limited leave be granted to her.

20. Mr Smart submitted that Judge Pooler was entitled to find that Ms Houghton did not have authority to make any promise about asylum, and there was and is no legitimate expectation in this case. I was referred to the witness statement of Kelvin Hibbs to the effect that it is outside his "business area" to be able to give authority to a caseworker to indicate that asylum would be granted. Although Judge Pooler made his decision without all the information now put before the Tribunal, his conclusion that she had no authority to make any promise about asylum is a conclusion that he was entitled to come to.

21. The letters from the appellant's solicitors in the bundle to which I was referred, indicated that it was not understood by the appellant and her representatives that asylum was to be granted. Thus, the letter dated 2 May 2013, at page 44 of the 128 page bundle, states that they had not heard from the respondent confirming the decision, and so it is clear that in their minds the decision did have to be confirmed.

22. On the basis of the documentary evidence now produced, it could be said that it is not entirely clear what in fact was said. However, given Judge Pooler's finding that Ms Houghton had told the appellant that she would be granted asylum, it is accepted that that is not a matter that can now be challenged by the respondent.

23. However, as to the question of any lack of authority on the part of Ms Houghton, her email and the statement of Kelvin Hibbs to the effect that it would not be their practice to confirm that asylum would be granted, indicates that Judge Pooler was right to say that she had no authority on this issue.

24. Furthermore, it is important to bear in mind that Judge Pooler went on to deal substantively with the asylum ground of appeal and dismissed it. His decision in that respect is not challenged. Thus, the appellant is not entitled to asylum and the Secretary of State could not be in a position to promise to grant asylum when she was not entitled to it. In this regard I was referred to the decision in EU (Afghanistan) v Secretary of State for the Home Department [2013] EWCA Civ 32. I was also referred to the decision of the Upper Tribunal in Mehmood (legitimate expectation) [2014] UKUT 00469 (IAC).

25. In reply, Mr Martin submitted that the question of 'ostensible authority' is relevant in terms of what would a reasonable person expect in terms of an official's authority to make a promise. I was reminded that the Presenting Officer before the Tribunal on 20 February 2013 had indicated in open court before a Tribunal Judge that the appellant would be granted asylum.

26. Contrary to what has been submitted on behalf of the respondent, it is not even now clear what the limits of the authority of the Presenting Officer were.

My assessment

27. There were two grounds of appeal before Judge Pooler. The first was that the decision was not in accordance with the law on the basis that the appellant had a legitimate expectation that she would be granted asylum in the light of what was said by the Presenting Officer on 20 February 2013. The second was the asylum and human rights ground.

28. Entirely correctly in my view, Judge Pooler identified the first issue to be determined as being what was said on 20 February 2013. He noted that an earlier hearing had been adjourned with a direction made for the respondent to file a statement from the Presenting Officer, Ms Houghton, who had been the Presenting Officer on 20 February 2013. That direction was not complied with and he did not have a statement from her. Nevertheless, neither party before Judge Pooler asked for a further adjournment and both invited him to proceed, which is what he did.

29. At [14] of his determination Judge Pooler identified the evidence that he had before him on the issue, being a record of proceedings completed by the judge on 20 February 2013, Counsel's attendance note, and a document dated 20 February 2013 prepared by Ms Houghton and headed "Refusal Withdrawal Pro Forma". Judge Pooler noted that the pro forma contained no reference to what was said at the hearing beyond the fact that the Tribunal and the appellant's representatives were informed of the decision to withdraw. However, it was seen that Counsel's note and the judge's record of proceedings are consistent, in that both recorded that the appellant was told that she would be granted asylum, Counsel's note being explicit as to the fact that this was said by Ms Houghton.

30. At [16] Judge Pooler stated that his provisional view at the hearing, as indicated to the parties, was that on the basis of the unchallenged evidence before the Tribunal, the Presenting Officer did tell the appellant that she would be granted asylum. At [18] he noted that although the pro forma completed by Ms Houghton did not assist in establishing what was said at the hearing on 20 February 2013 it is of assistance in establishing that she had required permission from a senior caseworker before withdrawing the respondent's decision. He then stated as follows:

> "This is in my judgment indicative of a lack of authority invested in her to make decisions of such significance; and I am satisfied that Ms Houghton did not have authority to bind the respondent to the grant of refugee status."

31. Later, at [21], he concluded that the ground of appeal that the decision was not in accordance with the law is disposed of "simply on the basis that Ms Houghton did not have authority to bind the respondent to grant asylum, and that what she said at the hearing did not amount to a promise by a public authority." In coming to his decision he referred to two authorities, namely Nadarajah v Secretary of State for the Home Department [2005] EWCA Civ 1363 and EU (Afghanistan).

32. As Mr Smart accepted, there is an unchallenged finding by Judge Pooler to the effect that Ms Houghton did tell the appellant that she would be granted asylum. That is not a matter that requires further exploration by me.

33. The next matter to be determined is whether Judge Pooler was right to conclude that Ms Houghton did not have authority to make any 'promise' that asylum would be granted. The pro forma which he had before him, and which was completed by Ms Houghton on 20 February 2013 states amongst other things:

> "Having discussed this matter with SCW Kelvin Hibbs, permission was granted to withdrawn [sic] our decision and return file to CO."

34. Later on the pro forma it is stated that the decision to withdraw was approved by Kelvin Hibbs SCW. Presumably, 'SCW' means Senior Case Worker.

35. Although Judge Pooler did not have before him any witness statement from Ms Houghton, nor of course the witness statement from Kelvin Hibbs which I have, as I have already indicated no application was made to Judge Pooler for an adjournment on behalf of the appellant or for a witness statement from Ms Houghton to be provided. Mr Martin makes the point that it was not for him on behalf of the appellant to get the respondent to provide the evidence that she was directed to provide. That I agree with. However, what it does mean is that Judge Pooler was only able to proceed on the basis of the evidence that was before him. It is clear, as Judge Pooler concluded, that Ms Houghton needed authority before withdrawing a decision, and in that regard she referred to a senior caseworker.

36. I am satisfied that Judge Pooler was entitled to conclude that in those circumstances Ms Houghton would not have had authority in his words, "to make decisions of such significance"; that is on the question of asylum. It is also to be noted that the pro forma says nothing at all about any likely, or even possible, grant of asylum. It only explains the basis on which the decision was being withdrawn.

37. It is as well to state what those reasons are, as given on the pro forma. I summarise. Ms Houghton wrote that having reviewed the evidence available to her she had withdrawn the refusal for the following reasons. She stated that the Immigration Judge, in line with recent Court of Appeal judgments relating to the Danian point in relation to *sur place* activities in the UK, would need to be satisfied that none of these activities would bring an appellant to the adverse attention of the authorities, whether or not they were carried out solely to bolster an asylum claim. She then wrote that given the "numerous documents internet (sic)", CDs, photographs and documentary evidence produced by the appellant, the Immigration Judge wanted to be certain of the respondent's position. She went on to state that the judge indicated that she was not satisfied that the Secretary of State had given due consideration to this point in the reasons for refusal letter.

38. She stated that she had informed the judge that there was a previous determination from Immigration Judge Birk dated 2 June 2010 in which the appellant had not been found credible in respect of her initial asylum claim and that that was the starting point. She noted however, that the Immigration Judge wanted details regarding the points she had raised. Ms Houghton states in the pro forma that she requested time to take instructions. There then follows the indication that she discussed the matter with the senior caseworker, Kelvin Hibbs. The pro forma goes on to state that both the appellant's mother and sister had been granted asylum in the UK on the basis of political opinion and that although on the basis of the current country guidance which she refers to, that was not an enhanced risk, but it is believed that this factor should have been considered by the decision maker. The pro forma indicates that the Tribunal and the appellant's representatives were informed of the decision that the respondent's decision was withdrawn.

39. Nothing in that document reveals anything other than that in the light of the concern expressed by the Immigration Judge, the matter would be looked at again.

40. Although not referred to on behalf of the appellant, I did raise with Mr Smart the last line of the pro forma which states, in bold type as follows: "The decision maker should now take the necessary steps to implement this decision." Mr Smart informed me, with reference to a blank pro forma, that this was merely part of the template for the pro forma. A blank pro forma that was shown to me is said to be similar to the one completed by Ms Houghton.

41. It is as well at this point to deal with the question of why there is no witness statement from Ms Houghton. That is explained, in part at least, by the copies of emails provided at the hearing before me. The emails are between a Senior Presenting Officer, Mr John Parkinson, Ms Houghton, and Mr Hibbs. One from Ms Houghton dated 14 October 2014 refers to extensive sick absence, which she explains. She indicates that she is willing to provide a witness statement if still required. A further email dated 6 January 2015 contains similar information and also refers to maternity leave whereby she will not be returning to work until "next year". Although it looked as if in January 2015 a witness statement was going to be prepared, Mr Parkinson indicates in his email dated 23 March 2015 that a witness statement for Ms Houghton was never in fact drafted.

42. Whilst it is understandable on the basis of the information in the emails that Ms Houghton was not initially able to provide a witness statement, it does not seem that the matter was pursued with much vigour on behalf of the respondent. It is not necessary for me to seek to apportion any blame in this respect. Suffice it to say, the witness statement should have been prepared in line with the Tribunal's direction. However, in the circumstances, its absence does not affect Judge Pooler's conclusion that Ms Houghton did not have authority to make any promise or representation in relation to asylum.

43. The question does arise however, as to whether a lack of authority to make a representation or promise is the end of the enquiry in terms of whether there is a legitimate expectation. Furthermore, a closer examination of the principles inherent in the doctrine of legitimate expectation is required. Thus, in Nadarajah (cited above) Laws LJ stated at [67]-[68] as follows:

> "67. For my part I would accept Mr Underwood's contention that there is no abuse of power here, and therefore nothing, in terms of legitimate expectation, to entitle the appellant to a judgment compelling the Secretary of State to apply the unrevised Family Links Policy in his case. I would so conclude on the simple ground that the merits of the Secretary of State's case press harder than the appellant's, given the way the points on either side were respectively developed by counsel. If my Lords agree, that disposes of the appeal. But I find it very unsatisfactory to leave the case there. The conclusion is not merely

simple, but simplistic. It is little distance from a purely subjective adjudication. So far as it appears to rest on principle, with respect to Mr Underwood I think it superficial to hold that for a legitimate expectation to bite there must be something more than failure to honour the promise in question, and then to list a range of possible additional factors which might make the difference. It is superficial because in truth it reveals no principle. Principle is not in my judgment supplied by the call to arms of abuse of power. Abuse of power is a name for any act of a public authority that is not legally justified. It is a useful name, for it catches the moral impetus of the rule of law. It may be, as I ventured to put it in *Begbie*, "the root concept which governs and conditions our general principles of public law". But it goes no distance to tell you, case by case, what is lawful and what is not. I accept, of course, that there is no formula which tells you that; if there were, the law would be nothing but a checklist. Legal principle lies between the overarching rubric of abuse of power and the concrete imperatives of a rule-book. In *Coughlan* (paragraph 71, cited above) Lord Woolf said of legitimate expectation, "[t]he limits to its role have yet to be finally determined by the courts. Its application is still being developed on a case by case basis." I do not begin to suggest that what follows fulfils the task. But although as I have said I would conclude the case in the Secretary of State's favour on the arguments as they stand, I would venture to offer some suggestions – no doubt *obiter* – to see if we may move the law's development a little further down the road, not least so as to perceive, if we can, how legitimate expectation fits with other areas of English public law.

68. The search for principle surely starts with the theme that is current through the legitimate expectation cases. It may be expressed thus. Where a public authority has issued a promise or adopted a practice which represents how it proposes to act in a given area, the law will require the promise or practice to be honoured unless there is good reason not to do so. What is the principle behind this proposition? It is not far to seek. It is said to be grounded in fairness, and no doubt in general terms that is so. I would prefer to express it rather more broadly as a requirement of good administration, by which public bodies ought to deal straightforwardly and consistently with the public. In my judgment this is a legal standard which, although not found in terms in the European Convention on Human Rights, takes its place alongside such rights as fair trial, and no punishment without law. That being so there is every reason to articulate the limits of this requirement – to describe what may count as good reason to depart from it – as we have come to articulate the limits of other constitutional principles overtly found in the European Convention. Accordingly a public body's promise or practice as to future conduct may only be denied, and thus the standard I have expressed may only be departed from, in circumstances where to do so is the public body's legal duty, or is otherwise, to use a now familiar vocabulary, a proportionate response (of which the court is the judge, or the last judge) having regard to a legitimate aim pursued by the public body in the public interest. The principle that good administration requires public authorities to be held to their promises would be undermined if the law did not insist that any failure or refusal to comply is objectively justified as a proportionate measure in the circumstances."

44. Later, at [70] he stated that:

> "70. There is nothing original in my description of the operative principle as a requirement of good administration. The expression was used in this context at least as long ago as the *Ng Yuen Shiu* case, in which Lord Fraser of Tullybelton, delivering the judgment of the Privy Council, said this (638F):
>
> > 'It is in the interest of good administration that [a public authority] should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty'.
>
> My aim in outlining this approach has been to see if we can conform the shape of the law of legitimate expectations with that of other constitutional principles; and also to go some small distance in providing a synthesis, or at least a backdrop, within or against which the authorities in this area may be related to each other. I would make these observations on the learning I have summarised earlier. First, there are some cases where, on a proper apprehension of the facts, there is in truth no promise for the future: *Ex p. Hargreaves*; see also *In re Findlay* [1985] AC 318. Then in *Ng Yuen Shiu* and *Ex p. Khan* the breach of legitimate expectations – of the standard of good administration – could not be justified as a proportionate response to any dictate of the public interest; indeed I think it may be said that there was no public interest to compete with the expectation. In *Coughlan* the promise's denial could not be justified as a proportionate measure. The three categories of case there described by Lord Woolf represent, I would respectfully suggest, varying scenarios in which the question whether denial of the expectation was proportionate to the public interest aim in view may call for different answers. In *Begbie*, the legitimate expectation was frustrated by the operation of statute. *Bibi* went off essentially on the basis that the authority had "simply not acknowledged that the promises were a relevant consideration in coming to a conclusion as to whether they should be honoured". Its primary importance arises from the court's comments on reliance, including its citation of Professor Craig. That there is no hard and fast rule about reliance to my mind illustrates the fact, which I have already sought to emphasise, that it is in principle no more than a factor to be considered in weighing the question whether denial of the expectation is justified – justified, as I would suggest, as a proportionate act or measure."

45. On the question of whether Ms Houghton had authority to make any promise or hold out any expectation that the appellant would be granted asylum, the decision in Bloggs 61 v Secretary of State for the Home Department [2003] EWCA Civ 686 is instructive. In essence, this was a judicial review claim in relation to representations allegedly made by police officers to the appellant that he would be kept in prison within one of the protected witness units rather than in a normal prison. At [30] Auld LJ stated that it was plain from the legal framework which had been summarised that the police:

> "… had neither actual authority to make the alleged representations on which the appellant relies, nor the authority to implement any such as might have been made. As to the latter, not even the Prison Service had authority

> to grant him the status of a protected witness for the duration of his sentence."

At [38] he stated as follows:

> "The starting point, as both counsel acknowledged, is that the Police could not bind the Prison Service to treat the appellant as a protected witness unless they, the Police, had actual or ostensible authority to do so. There is no evidence that the Police had such actual authority, quite the contrary as Mr. Jay submitted and as Ouseley J found, in paragraph 64 of his judgement, by reference to the extracts from the Police Circular and the Prison Service Instructions which I have set out above. Nor, for the reasons urged by Mr. Jay and helpfully summarised by Ouseley J. at paragraphs 64 and 65 of his judgment, was there any basis on the evidence for holding that the Police had ostensible authority, namely from any specific or general act or practice of the Prison Service of holding out, or of adopting regardless of its own its management requirements, whatever promises police officers make in this context."

Further, at [39] one finds the following:

> "But, even if in private law terms the Prison Service had in some way held out the Police as having authority to commit it generally or in the case of this appellant to retaining protected witness status for the whole of a sentence, the appellant could not have relied upon the principle of legitimate expectation to enforce that commitment. That is because, although it would not have been inconsistent with its statutory powers in the 1952 Act or the Prison Rules, it would not have been a "legitimate" expectation. This is where, in the circumstances of this case, the public law concept of legitimate expectation parts company with private law principles of ostensible authority or estoppel. Even if the appellant had not appreciated at the time of such representations as were made that the Police did not also speak for the Prison Service and/or that the Service could not, in any event, bind itself in that way, he could not claim, in reliance on the representations that he had a *legitimate* expectation of their fulfilment."

46. This resonates with a point to which I shall return in terms of whether the appellant could in any event have had any "legitimate" expectation of being granted asylum.

47. In the circumstances, I am satisfied that Judge Pooler was correct to find that the absence of authority on the part of Ms Houghton to make any promise or representation in terms of the grant of asylum was sufficient to dispose of the argument that the respondent's decision was not in accordance with the law.

48. Mr Martin draws attention to the letters written on behalf of the appellant seeking relevant documentation in connection with what is said to have been an expected grant of refugee status. The lack of response on behalf of the Secretary of State is another unsatisfactory feature of the way the appellant's case has been handled by those acting on behalf of the Secretary of State. This is potentially relevant in terms of what may be said to be other features of the doctrine of legitimate expectation, for example the question of whether an individual has acted to their

detriment. In this case, that means that the appellant has been unfairly made to believe that she would be granted refugee status, and that that belief extended over a significant period of time. Mr Smart however, draws attention to the fresh refusal letter dated 4 April 2014, submitting that by that time the appellant would have been aware that she was not going to be granted asylum. This also ties in with one of the six factors referred to in submissions on behalf of the claimant in the case of Nadarajah, namely where the promise is the result of an honest mistake which is then corrected, tending to weigh against enforcement of the decision (see [64] of Nadarajah).

49. However, even accepting that there was "detrimental reliance" by the appellant in the sense that she will have unfairly been put in the state of mind of expecting to be granted asylum, for a significant period of time, and even if it could be said that the correction of any mistake was not rectified in a timely manner, there is still a formidable hurdle for the appellant to overcome, given that the appellant on the facts of her claim was not, and is not, entitled to a grant of refugee status. Judge Pooler went on to consider the merits of the asylum claim and for legally sustainable reasons concluded that she had not given a credible account. His decision in that respect has not been challenged.

50. The principle is clear from the decision in Bloggs and from ex parte Coughlan [2001] QB 213 at [86]. Similarly, in Nadarajah at [68] Laws LJ stated that:

> "A public body's promise or practice as to future conduct may only be denied, and thus the standard I have expressed may only be departed from, in circumstances where to do so is the public body's legal duty, or is otherwise, to use a now familiar vocabulary, a proportionate response (of which the court is the judge, or the last judge) having regard to a legitimate aim pursued by the public body in the public interest. The principle that good administration requires public authorities to be held to their promises would be undermined if the law did not insist that any failure or refusal to comply is objectively justified as a proportionate measure in the circumstances."

51. As I have indicated, the appellant has been found not to be in need of asylum. She is not entitled to the status that it is now claimed she is entitled to by reason of what was said at the hearing by the Presenting Officer on 20 February 2013.

52. Insofar as it is argued that I should find that the appellant is entitled to some period of leave, perhaps in terms of some 'corrective principle' I need do nothing other than reproduce a quotation from EU (Afghanistan), set out by Judge Pooler at [22] of his determination. At [6] of EU (Afghanistan) the following was said:

> "I have to say that, like the Court of Appeal in *S*, I have great difficulties with the judgments in *Rashid.* In cases that are concerned with claims for asylum, the purpose of the grant of leave to remain is to grant protection to someone who would be at risk, or whose Convention rights would be

> infringed, if he or she was returned to the country of nationality. Of course, breaches of the duty of the Secretary of State in addressing a claim may lead to an independent justification for leave to remain, of which the paradigm is the Article 8 claim of an asylum seeker whose claim has not been expeditiously determined, with the result that he has been in this country so long as to have established private and family life here. But to grant leave to remain to someone who has no risk on return, whose Convention rights will not be infringed by his return, and who has no other independent claim to remain here (such as a claim to be a skilled migrant), is to use the power to grant leave to remain for a purpose other than that for which it is conferred. In effect, it is to accede to a claim to remain here as an economic migrant. The principle in *Rashid* has been referred to as "the protective principle", but this is a misnomer: the person seeking to rely on this principle needs to do so only because he has been found not to be in need of protection. I do not think that the Court should require or encourage the Secretary of State to grant leave in such circumstances either in order to mark the Court's displeasure at her conduct, or as a sanction for her misconduct. I agree with the short judgment of Lightman J in *S*. He said:
>
> > … I have the gravest difficulty seeing how the fact that the challenged administrative act or decision falls within one category of unlawfulness as distinguished from another, and in particular the fact that it constitutes an abuse of power giving rise to conspicuous unfairness, can extend to the remedies available to the courts."

53. For the above reasons, I am not satisfied that there is any error of law in the decision of the First-tier Tribunal. Accordingly, the appeal against its decision is dismissed.

Decision

54. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision to dismiss the appeal on all grounds therefore stands.

Upper Tribunal Judge Kopieczek 7/05/15