



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: IA/41610/2013

THE IMMIGRATION ACTS

Heard at Field House
On 13 November 2015

Decision Promulgated
On 25 November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

IRAM DANIEL

Respondent

Representation:

For the Appellant: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

For the Respondent: Absent

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-

tier Tribunal Judge Hands, promulgated on 8 July 2014 which allowed the Appellant's appeal.

Background

3. The Appellant was born on 04 February 1982 and is a national of Pakistan.
4. On 11 July 2013 the Secretary of State refused the Appellant's application for variation of leave to remain in the UK.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Hands ("the Judge") allowed the appeal against the Respondent's decision. The Judge relied on a direction made by First-tier Tribunal Judge Cope in his decision dated 04 June 2014.

6. Grounds of appeal were lodged and, on 01 September 2014, Judge Hollingworth gave permission to appeal stating

"In the light of the background to this case it is arguable that the matter should have been listed for oral hearing in order to crystallise the position of each party. An error of law thereby vitiates the decision."

The Hearing

7. The Appellant did not attend the appeal nor was she represented at the appeal. I am satisfied that due notice of the appeal was served upon the Appellant at the address that was given. I am satisfied that it is in the interests of justice to proceed with the hearing in the Appellant's absence as I am entitled to do by virtue of paragraph 38 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

8. Ms Willocks-Briscoe for the respondent told me the judge had been incorrect to find in favour of the appellant, and to approach this case on the basis that the respondent conceded the appeal. She argued that the respondent's decision had never been withdrawn, even though the respondent has not complied with directions. She emphasised that the appellant had claimed asylum in May 2014 and that, since the Judge's decision was promulgated, the appellant has left UK. She said that the decision displayed bias in favour of the appellant which amounted to a procedural misdirection causing unfairness. She urged me to consider (if I find that there is a material error of law) whether or not the appeal has been abandoned because the appellant has left UK.

Analysis

9. Neither party in this case request an oral hearing. The case first called as a "paper case" placed before the First-tier Tribunal Judge Cope. He found that there was inadequate documentary evidence to allow him to justly determine

the case, and so issued directions to the respondent to produce further documentary evidence. In his decision dated 4 June 2014 he set out the history of the appeal, and issued the following direction.

“6. Having regard to the determination of the Upper Tribunal in *Cvetkovs (Latvia)* [2011] UKUT 00212 (IAC) the respondent is now directed to serve on the IAC and on the appellant by 4th July 2014 a copy of the notice of decision to which the notice of appeal relates; any other document giving reasons for that decision; any unpublished documents on which the respondent relies; the application form; and any supporting documents supplied by or on behalf of the Appellant, including particularly the covering letter from Crystal Advice Centre and its enclosures.

7. If the documents are not served by the date specified the appeal will be decided on the basis that the respondent no longer opposes the appeal or supports any contention made in the notice of decision of 11th July 2013.”

10. It is a matter of concession that the respondent ignored that direction. In *Cvetkovs (visa - no file produced - directions) Latvia* [2011] UKUT 00212 (IAC) the Tribunal said that (i) Where a visit visa application is refused because the Visa Officer is not satisfied of the appellant’s intentions as a result of only limited documents being produced and translated; and the respondent breaches Procedure Rules by failing to send documentation to the Tribunal, directions can be given indicating that unless the respondent complies with the rules it may be that the Tribunal will assume that the appeal is unopposed; and (ii) Where the respondent breaches Procedure Rules by failing to send documentation to the Tribunal, and the First-tier Tribunal issues a reasoned decision, based on the material before it, allowing the appeal, a challenge by the respondent based on sufficiency of reason is unlikely to prosper on an application for permission to appeal to the Upper Tribunal.

11. In this case the Judge gives a reasoned decision setting out quite clearly the background to the appeal and making findings in fact from the limited evidence that was available. The truth (which the respondent might find unpalatable) is that only limited evidence was available because the respondent chose to ignore an unambiguous direction which gave the respondent a chance to rectify the deficiencies in the preparation of the respondent for this appeal. The direction made by First-tier Tribunal Judge Cope quite clearly warned the respondent that a failure to comply with directions would result in the appeal being determined on the basis that the respondent no longer opposes the appeal. That is exactly what happened. In marking an appeal against the Judge’s decision the respondent does not identify an error in law. Instead the respondent emphasises her own mistake in ignoring the direction issued the First-tier Tribunal Judge Cope.

12. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

13. In this case the Judge produced a well-reasoned decision. The decision is brief because of the paucity of evidence produced by the respondent. The Judge did not simply refer to First-tier Tribunal Judge Cope's direction, instead she manifestly considered all of the evidence placed before her before reaching a decision which was well within the range of decisions available to the Judge. The decision does not display bias, as is argued for the respondent. (The decision might have displayed bias if the Judge had ignored the respondent's failure to adhere to directions). In reality, the decision explains to the objective reader why the appellant was successful and why the respondent was unsuccessful.

14. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

15. A fair reading of the Judge's decision indicates that there is no misdirection of law and that the fact-finding process cannot be criticised. As I have already indicated, the Judge's conclusion was a conclusion which was reasonably open to her.

16. I find that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

17. No errors of law have been established. The Judge's decision stands.

DECISION

18. The appeal is dismissed.

Signed

Date 20/11/2015

Deputy Upper Tribunal Judge Doyle