



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/08602/2014  
Decision promulgated  
On 5 April 2016

**THE IMMIGRATION ACTS**

Before

**RH  
(ANONYMITY DIRECTION MADE)**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION**

1. On 17 February 2016 the Tribunal issued a direction in the following terms:
  1. The appellant has applied for permission to appeal to the Court of Appeal. The challenge is narrow, limited to an objection to DUTJ Pickup upholding at [11] the positive credibility findings of the First-tier Tribunal but directing at [20], [21] and in the Directions that the remaking in the First-tier Tribunal would be “afresh” and “with no findings of fact preserved”.
  2. The directions on the scope of the re-making are not consistent with the decision at [11] that the positive credibility findings of the First-tier Tribunal did not disclose an error of law.
  3. The reference at [19] to the Upper Tribunal not exercising a primary fact finding function is anomalous given the preserved findings of the First-tier Tribunal.

4. The reference at [20] to a fresh hearing being required as a fair hearing did not take place is anomalous where this was not a ground raised by either party.

5. It is not set out in the grounds of appeal how a direction attached to a remittal decision can form the basis of a challenge to the Court of Appeal, however.

6. Also, directions can be varied so the point could be dealt with by way of an application to the First-tier Tribunal for the direction on the scope of the remittal to be varied. The availability of this alternative suggests that the challenge would be unlikely to meet the second appeals criteria.

7. The scope of the remittal is clearly of material importance to the appellant, however. Having considered the matter at some length, my preliminary decision is to exercise the power under Rule 48 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and treat the application for permission as an application for set aside of part of the decision under Rule 43.

8. The final terms of the Upper Tribunal decision responding to the challenge to the Court of Appeal would be:

*"1. The Tribunal treats the application for permission to appeal to the Court of Appeal as an application for set aside; Rule 48 of the Tribunal Procedure (Upper Tribunal) Rules 2008 applied.*

*2. The decision promulgated on 21 December 2015 of Deputy Upper Tribunal Judge Pickup is set aside under Rule 43 to the extent that it remits the appeal to the First-tier Tribunal to be re-made "afresh" or "with no findings of fact preserved".*

*3. The re-making of the appeal by the First-tier Tribunal will proceed on the basis of the preserved findings of fact from the determination of First-tier Tribunal Judge Lall; see [11] of Deputy Upper Tribunal Judge Pickup's decision."*

9. The preliminary decision will become final subject to any written objections from the parties made within 7 days the date of issue of this direction. No response will be deemed to be consent to the preliminary decision becoming final.

2. There has been no response from either party. The preliminary decision therefore became final as of 25 February 2016. The appeal is remitted to the First-tier Tribunal to be re-made in line with the decision of Deputy Upper Tribunal Judge Pickup promulgated on 21 December varied to the extent set out above as to the preserved findings.

Signed:   
Upper Tribunal Judge Pitt

Date: 17 March 2016