



IAC-FH-AR-V1

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

Appeal Number: IA/00486/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 26 February 2016**

**Notice of Decision Promulgated
On 29 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**KANTAM SODKAEW
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms A. Fijiwala, Home Office Presenting Officer

For the Respondent: Mr. D. Bazini of Counsel, instructed by E2W (UK) Ltd.

NOTICE

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Tipping promulgated on 24 August 2015, in which he allowed Miss Sodkaew's appeal against the Respondent's decision to refuse to grant leave to remain and to remove her from the United Kingdom.
2. At the outset of the hearing Ms Fijiwala applied for permission to withdraw the appeal pursuant to rule 17 of the Tribunal Procedure (Upper Tribunal) Rules 2008. She submitted that the decision of the First-tier Tribunal was correct. The judge had found that Miss. Sodkaew and her Sponsor were in a genuine and subsisting relationship, and had therefore found that the

Sponsor was Miss. Sodkaew's partner for the purposes of E-LTRP.1.2. Therefore she met the requirements of GEN.1.2, such that paragraph EX.1 did not apply. The grounds of appeal submitted that the decision was wrong because the judge had failed to consider paragraph EX.1, but Ms Fijiwala accepted that the application had been made in error.

3. Mr. Bazini stated that he was grateful to Ms Fijiwala for applying to withdraw the application. He referred to a letter from his instructing solicitors dated 18 January 2016 pointing out that the application for permission to appeal was misconceived and inviting the Secretary of State to withdraw the appeal. This letter stated that failing withdrawal, a costs order would be made.
4. Before me Mr. Bazini made a costs application pursuant to rule 10 of the Tribunal Procedure (Upper Tribunal) Rules 2008. He submitted that the grounds of appeal presented by the Secretary of State had been misconceived and unreasonable. Miss. Sodkaew's costs should be awarded both for attendance at the hearing before me, and also for the work done subsequent to the Secretary of State's application.
5. He referred me to paragraph 25 of Cancino (costs – First-tier Tribunal – new powers) [2015] UKFTT 59. Ms Fijiwala had acted correctly in applying to withdraw the appeal, but the fact that she had only obtained the file on the day prior to the hearing did not excuse the Secretary of State for failing to apply to withdraw the appeal earlier.
6. Ms Fijiwala submitted that she was not in a position to deal with a costs application at the hearing before me. Accordingly I made directions for written submissions to be made in relation to the costs application.

Notice

7. The appeal is withdrawn pursuant to rule 17 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Directions

8. The Secretary of State is to provide written submissions in response to the application for a costs order within 21 days of the date of the hearing.
9. Miss. Sodkaew is to provide any response to those submissions within 14 days of receiving them.

No anonymity direction is made.

Signed

Date 10 March 2016

Deputy Upper Tribunal Judge Chamberlain