



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

Appeal Number: PA/02400/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision &  
Promulgated**

**Reasons**

**On 13 July 2016**

**On 21 July 2016**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

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

Appellant

**and**

**TS  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr P Duffy, Home Office Presenting Officer

For the Respondent: Ms B Jones, Counsel

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Kanagaratnam who, in a determination promulgated on 10 May 2016, purported to allow the appellant's appeal on human rights grounds.
2. I make an anonymity direction in this case. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings. I make this decision on the basis of the risk of serious harm arising to TS from the contents of his asylum claim.

3. For the purposes of this appeal I refer to the Secretary of State as the respondent and to TS as the appellant, reflecting their positions before the First-tier Tribunal.

4. The respondent's challenge was as follows:

"It is submitted that within the 'notice of decision' the appeal is allowed under human rights grounds however at no point has the judge given clear reasons within the body of the determination as to why the appellant would be successful due to a breach of human rights. The reasons within the determination itself suggests quite the opposite. In paragraph 16 the FTJ states that 'I find that the removal of this appellant from the United Kingdom **would not** cause the United Kingdom to be in breach of its obligations to the European Convention of Human Rights'.

It is clear that the judge has made a clerical error with this determination. The SSHD takes notice of the case of Katsonga ("Slip Rule: FtT's general powers) [2016] UKUT 00228 (IAC), where it is stated that the 'Slip Rule' cannot be used to reverse a decision. However it is submitted that the discrepancies between the judge's reasoning and the final decision do present a material error of law, therefore the decision should be set aside".

5. Permission was granted on that sole ground by the First-tier Tribunal in a decision dated 8 June 2016 issued on 9 June 2016.

6. I was provided with a Rule 24 response dated 13 July 2016. Mr Duffy did not object to its late admission and I extended time in order for it to be admitted. At paragraph 3 it states:

"The respondent's sole ground of appeal is that the decision allowing the appellant's appeal on human rights grounds is at variance with the reasoning in the determination. The appellant cannot resist this ground, and agrees that the decision should be set aside".

7. There is therefore agreement that the decision of the First-tier Tribunal discloses an error on a point of law in stating that the appeal was allowed on human rights grounds. It is my decision that this part of the decision alone requires re-making and I do so, refusing the appeal on human rights grounds.

8. Ms Jones sought to argue that the re-making could and should be much wider, addressing various purported errors in the decision of the First-tier Tribunal. I was also referred to a letter from the current representatives to the previous representatives complaining about their conduct of the case.

9. It was not my view that the decision should be re-made other than on the narrow basis set out above. I have set out the limited ground upon which permission was sought and granted and which was conceded by the appellant. There was no cross-appeal on any ground from the appellant.

He therefore did not have permission to argue any error of law in the decision of the First-tier Tribunal before me. He was not in a position to have any part of the First-tier Tribunal re-made other than that discussed above.

10. The Tribunal has addressed the appellant's submission in EG and NG (UT rule 17: withdrawal; rule 24 scope) Ethiopia [2013] UKUT 00143 (IAC). The third paragraph of the head note to that case states

"A party that seeks to persuade the Upper Tribunal to replace a decision of the First-tier Tribunal with a decision that would make a material difference to one of the parties needs permission to appeal. The Upper Tribunal cannot entertain an application purporting to be made under Rule 24 for permission to appeal until the First-tier Tribunal has been asked in writing for permission to appeal and has either refused it or declined to admit the application".

11. As I understood it the appellant sought to argue that it remained within my discretion to extend the scope of the re-making to address what he considered to be the shortcomings in the credibility findings of the First-tier Tribunal and, further, to admit a witness statement from his sister and an independent social work report neither of which were provided before the First-tier Tribunal.
12. That argument appeared to me to seek to override due process and the statutory constraints on the Tribunal. What the appellant is really asking is to for his case to be looked at again now because he considers that he had poor representation before the First-tier Tribunal and has a better case now to present. Those arguments could have been made in an application for permission to appeal but were not. The proper course open to him is to make a fresh claim to the respondent.
13. Ms Jones made a tentative application for me to sit as a First-tier Tribunal judge and decide on an application for permission to appeal. I declined to do so as that also appeared to me to be a course of action which sought to undermine due process.

### **Notice of Decision**

14. The determination of the First-tier Tribunal discloses an error on a point of law on the narrow basis set out above.
15. The appeal is re-made as refused on all grounds.

Signed:   
Upper Tribunal Judge Pitt

Dated: 20 July 2016