



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

Appeal Number: PA/01103/2017

THE IMMIGRATION ACTS

**Heard at Manchester
On 25 August 2017**

**Notice Sent
On 13 September 2017**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

**SS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant herein is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of the appellant's family. Failure to comply with this direction could lead to contempt of court proceedings.

Representation:

For the Appellant: Mr Semega-Janneh, instructed by Fountain Solicitors
For the Respondent: Ms J Isherwood, Senior Presenting Officer

NOTICE OF ABANDONMENT

Introduction

1. The appellant is a national of Somalia born in January 1997. She appealed to the First-tier Tribunal (“Fett”) against a decision of the Secretary of State for the Home Department refusing her protection and human rights claims. The appeal was heard by First-tier Tribunal Judge Alis and allowed on Article 3 and Humanitarian Protection grounds but dismissed on Refugee Convention grounds, in a decision of 15 March 2017.
2. On 29 March 2017, the appellant sought permission to appeal to the Upper Tribunal in relation to the decision made by the Ft. on Refugee Convention grounds. On that same date, the Secretary of State granted the appellant Humanitarian Protection until 28 March 2022. Notice to this effect was sent to the appellant by the Secretary of State on 30 March 2017. The next relevant event is the refusal of permission to appeal by ft. Judge Easterman, sent to the parties on or around 10 April 2017.
3. On 26 April 2017, the appellant renewed her application for permission to appeal to the Upper Tribunal. The notice of application did not identify the fact that the appellant had been granted leave to remain.
4. Permission was granted by Upper Tribunal Judge Kebede in a decision of 9 May 2017.

Legal Framework

5. By section 104(4A) of the Nationality, Immigration and Asylum Act 2002 an appeal under section 82(1) (which this is) brought by a person while in the United Kingdom shall be treated as abandoned if that person is granted leave to enter or remain in the United Kingdom, subject to section 104(4B). Section 104(4B) identifies that section 104(4A) does not apply to an appeal insofar as it is brought on asylum or humanitarian protection grounds where the appellant, “... (b) gives notice in accordance with the Tribunal Procedure Rules that he wishes to pursue the appeal insofar as it is brought on that ground.”
6. Turning to the Tribunal Procedure (Upper Tribunal) Rules 2008, by rule 17A:
 - “(2) Where an appeal is treated as abandoned pursuant to Section 104(4) or (4A) of the Nationality, Immigration and Asylum Act 2002 ... the Upper Tribunal must send the parties a notice informing them that the appeal is being treated as abandoned or finally determined.
 - (3) Where an appeal would otherwise fall to be treated as abandoned pursuant to Section 104(4A) of the Nationality, Immigration and Asylum Act 2002, but the appellant wishes to pursue their appeal, the appellant must send or deliver a notice, which must comply with any relevant practice directions, to the Upper Tribunal and the respondent so that it is received within thirty days of the date on which the notice of the grant of leave to enter or remain in the United Kingdom was sent to the appellant.

...

- (5) Notwithstanding rule 5(3)(a) (case management powers) and rule 7(2) (failure to comply with the rules etc.), the Upper Tribunal must not extend the time limits in paragraphs (3) and (4)."

(Emphasis added).

7. The "*Practice Direction, Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal*" as amended by the Senior President of the Tribunals on 13 November 2014 materially reads as follows:

"5 Pursuing appeal after grant of leave

5.1 This Practice Direction applies where:

- (a) an appeal would otherwise fall to be treated as abandoned pursuant to section 104(4A) of the 2002 Act because the appellant is granted leave to remain in the United Kingdom; but
- (b) the appellant wishes, in pursuance of section 104(4B) or (4C), to pursue the appeal, insofar as it is brought on asylum grounds or on grounds of unlawful discrimination.

5.2 Where this Practice Direction applies, the appellant must comply with the following requirements (which are the relevant practice directions for the purposes of UT rule 17A(3)).

5.3 Where section 104(4B) of the 2002 Act (asylum grounds) applies, the notice required by UT rule 17A(3) to be sent or delivered to the Upper Tribunal must state:

- (a) the appellant's full name and date of birth;
- (b) the Tribunal's reference number;
- (c) the Home Office reference number, if applicable;
- (d) the Foreign and Commonwealth Office reference number, if applicable;
- (e) the date on which the appellant was granted leave to enter or remain in the United Kingdom for a period exceeding 12 months; and
- (f) that the appellant wishes to pursue the appeal in so far as it is brought on the ground specified in section 84(1)(g) of the 2002 Act which relates to the Refugee Convention. ...

5.5 Where an appellant has sent or delivered a notice under UT rule 17A(3), the Upper Tribunal will notify the appellant of the date on which it received the notice."

Decision and Reasons

8. At the outset of the hearing I invited Mr Semega-Janneh to specify whether the appellant had sent a document in compliance with the abovementioned procedure rule and practice direction to the Upper Tribunal and respondent - there being no such document contained within the Tribunal's file.

9. Initially Mr Semega-Janneh asserted that the Tribunal should treat the application for permission to appeal as a document complying with the requirements of rule 17A of the 2008 Rules; however, as already identified, this application did not, *inter alia*, notify the Upper Tribunal of the grant of leave to remain made to the appellant, and neither did the appellant send a copy of such 'notice' to the respondent within the required timeframe - or at all. It does not, therefore, meet the requirements of rule 17A.
10. Over the space of the following hour Mr Semega-Janneh sought instructions on this issue, which resulted ultimately in an acceptance that the appellant had not sent, either to the Upper Tribunal or to the respondent, a document (or a combination of documents) with the features required by rule 17A and the Practice Direction, whether within or outwith the specified thirty-day time frame. Had this concession not been made I would have inevitably have come to the same conclusion, given the absence of any documentation before the Upper Tribunal complying with the relevant rule and practice direction.
11. Whilst accepting that the requirements identified in rule 17A are mandatory Mr Semega-Jannah, nevertheless, submitted that such requirements should be relaxed in the instant case in the interests of justice. I reject this submission. The Tribunal has no discretion to depart from the requirements set out in section 104(4A) of the 2002 Act and rule 17A of the Tribunal Procedure Rules and, even if it did, there are no features of the instant case that would lead me to exercise such discretion in the appellant's favour.

Conclusion

12. The appellant not having served notice as required by section 104(4B) of the 2002 Act, I treat his appeal as abandoned pursuant to Section 104(4A) thereof. This is notice of such abandonment, given pursuant to rule 17A(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed:



Upper Tribunal Judge O'Connor