Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11508/2017

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On 8 November 2018	**On 6 December 2018**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ALI [I]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr C Bates, Home Office Presenting Officer
For the Respondent: Ms A Imamovic, Counsel, instructed by UK & Co Solicitors

DECISION AND REASONS

1. The appellant (hereafter "the Secretary of State" or "SSHD") has permission to challenge the decision of Judge Obhi of the First-tier Tribunal (FtT) sent on 18 December 2017 allowing the appeal of the respondent (hereafter "the claimant") against the decision made by the SSHD on 25 October 2017 refusing his protection claim.

2. The SSHD's sole ground is that the substance of the judge's decision was overwhelmingly against the claimant and there was no rational basis for him having allowed the appeal. It was suggested that his allowance of the appeal was a clear typographical error.

3. At the hearing before me Ms Imamovic sought permission to challenge the judge's decision on the basis that his adverse credibility assessment was legally flawed. Mr Bates opposed that application on the basis that the claimant had not made any Rule 24 response and had not applied to the First-tier Tribunal for permission to appeal. Ms Imamovic said that this failure, albeit regrettable, should not shut the claimant out from arguing that the judge's decision was flawed for other reasons than that stated by the SSHD.

4. I am unable to accept Ms Imamovic's application. As clarified by the Upper Tribunal in **EG and NG** [2013] UKUT 00143 (IAC)**,** a party who wishes to challenge a decision of the FtT must seek and obtain permission to appeal to the Tribunal. Ms Imamovic has argued that the failure of the claimant's solicitors to make such an application or to make a Rule 24 response was not the fault of the claimant but she does not dispute that both the claimant and his representatives received the judge's decision shortly after it was sent. Given safe receipt, it was the responsibility of both to respond to it. Even after the claimant and solicitors received the SSHD's application for permission and learnt that permission had been granted, they made no response. In such circumstances, it is not open to the claimant to seek to challenge the judge's decision on grounds other than those on which there has been a grant of permission.

5. The consequences of the above is that there is no challenge to the judge's findings of fact. The only challenge before me is by the SSHD to the rationality of the judge's statement in paragraph 46 that the appeal was allowed on asylum grounds. That statement is in flat contradiction not only to the judge's statement at paragraph 44 that the claimant's appeal is dismissed on asylum grounds, but to the entire substance of the judge's preceding findings of fact, which comprehensively rejected his claim to be a genuine Christian convert.

6. Whether because of oversight or a typo or some other cause, it is inescapable that the judge's stated decision at paragraph 46 was irrational and the error was of such a material nature that it must be set aside.

7. As regards the decision that needs to be re-made, there is no admitted challenge to the judge's findings of fact. On the basis of those clear and unequivocal findings, the only outcome is for me to dismiss the claimant's appeal.

8. To conclude:

   The decision of the FtT is set aside for material error of law.

   The decision I re-make is to dismiss the claimant's appeal.

   No anonymity direction is made.

Signed Date: 1 December 2018

Dr H H Storey
Judge of the Upper Tribunal