



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

Appeal Number: PA/08743/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 February 2019**

Decision & Reasons Promulgated  
On 13 May 2019

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

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

Appellant

**and**

**S H**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

Anonymity should have been granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the respondent (SH) is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent.

**Representation:**

For the appellant: Mr I. Jarvis, Senior Home Office Presenting Officer

For the respondent: Ms A. Harvey instructed by Cranbrook Solicitors

## **DECISION AND REASONS**

1. For the sake of continuity, I shall continue to refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal before the Upper Tribunal.
2. The appellant (SH) appealed the respondent's (SSHD) decision dated 29 June 2018 to refuse a protection and human rights claim.
3. First-tier Tribunal Judge Herbert ("the judge") allowed the appeal in a decision promulgated on 03 September 2018.
4. The Secretary of State appeals the First-tier Tribunal decision on the ground of procedural unfairness. The Secretary of State relied on a quote from a post-hearing note by the Home Office Presenting Officer, which alleged that the judge made comments and asked questions during the hearing which indicated that he was bias against the respondent's case. He did not allow questioning as to how one of the witnesses obtained his status in the UK. The Presenting Officer asserted that the judge's conduct "lacked impartiality, professionalism and started commenting and laughing with the Applnt counsel". The respondent relied on the decision in *Sivapatham (Appearance of Bias)* [2017] UKUT 00293.

### **Decision and reasons**

5. Having considered the ground of appeal and submissions made by both parties I am satisfied that the First-tier Tribunal decision did not involve the making of an error on a point of law.
6. The burden is on the Secretary of State to show that a fair-minded observer, having considered the facts, would concluded that there was a real possibility that the tribunal was bias: see *Porter v Magill* [2001] UKHL 67.
7. Apart from the section quoted in the grounds there is no witness statement from the Presenting Officer who was present at the hearing. No copy of the original note has been produced. The only evidence before the Tribunal is a summary of her file note in the text of the grounds of appeal.
8. In contrast, the appellant has produced a witness statement from counsel who attended the hearing and a copy of his contemporaneous notes and a witness statement from the solicitor who attended the hearing and a copy of his attendance note. The judge has also produced a note in response to the allegations. The picture provided by those witnesses does not support the allegations made about the judge's conduct.
9. The evidence is consistent in stating that the judge limited questioning on one particular area, but the circumstances do not indicate that this was

done unfairly. A judge is entitled to control the evidence and the questioning if he considers that it is not material to the issues that need to be determined in the appeal. It was within a range of reasonable responses for the judge to find that it was not necessary to question the supporting witness about his own immigration history and how he came to be granted leave to remain.

10. Clearly the Presenting Officer was not happy when the judge stopped her from pursuing a line of questioning that she thought was relevant, but in the absence of anything more, and in light of the dearth of evidence from the Presenting Officer herself, any tensions at the hearing between the Presenting Officer and the judge are not elevated to a potential error of law. There is no challenge to the other findings made by the judge, which were open to him to make on the evidence.
11. I conclude that the weight of the evidence does not show that a fair-minded observer, having considered all the facts, would conclude that there was a real possibility that the Tribunal was bias.

#### DECISION

The First-tier Tribunal decision did not involve the making of an error of law

Signed  Date 09 May 2019  
Upper Tribunal Judge Canavan