



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

Appeal Number: PA/09071/2017

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 29 April 2019**

**Decision & Reasons Promulgated  
On 1 May 2019**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

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

Appellant

**and**

**M S**

**(anonymity direction made)**

Respondent

**Representation:**

For the Appellant: Mr A McVeety Senior Home Office Presenting Officer.

For the Respondent: Mr O Atuegbe, Solicitor, R & A Solicitors.

**ERROR OF LAW FINDING AND REASONS**

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Khawar who despite in the body of the determination setting out a detailed analysis of the evidence provided in the section headed "Assessment of Credibility Findings of Fact" leading to it being concluded that MS had not made out an entitlement to a grant of international protection or an entitlement for leave to remain under the Immigration Rules or pursuant to ECHR, proceeded in the section

headed "Notice of Decision" to allow the appeal on asylum, humanitarian protection, and human rights grounds.

2. Permission to appeal has been granted by another judge of the First-Tier Tribunal on the basis the notice of decision is not consistent with the body of the decision and, as properly pointed out in the respondent's application, the Judge appears to have made a slip error in the Notice.

### **Error of law**

3. There is no cross-appeal by Mr Sharif against any of the factual findings made by the Judge which shall stand unchallenged. Although Mr Atuegbe asserted there are errors of fact in the decision, in EJ & MC [2013] UKUT 143 the head note at (3) reads "*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.*" No such application has been made to the First-tier Tribunal.
4. The Judge in the findings made gives ample reasoning for why it was concluded that MS's appeal must fail.
5. I find the Judge has erred in law in allowing the appeal on all grounds which are findings contrary to the main body of the decision under challenge. It is also legally wrong to allow an appeal on both asylum and humanitarian protection grounds as the latter can only be considered if an individual is not entitled to be recognised as a refugee.
6. This is a case in which as a result of a slip or lack of due care in the checking of the decision the Judge purports to have allowed an appeal which should have been refused. I therefore set aside the decision on the basis of the unchallenged facts as found and substitute a decision to dismiss the appeal on all grounds.
7. Despite the Judge indicating in the header that no anonymity direction had been made it also is clearly stated at [47] that such a direction has been made which is confirmed further at [52].

### **Decision**

8. **The Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is dismissed on all grounds.**

Anonymity.

9. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 29 April 2019