



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/00497/2018**

THE IMMIGRATION ACTS

**Decided Without A Hearing Under Rule
34
On 26 November 2020**

**Decision & Reasons
Promulgated
On 03 December 2020**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**J H
(ANONYMITY DIRECTION MADE)**

Respondent

Anonymity

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

Anonymity was granted at an earlier stage of the proceedings. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the original appellant (JH) 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.

DECISION AND REASONS

1. For the sake of continuity I will refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant before the Upper Tribunal.

2. The appellant (JH) appealed the respondent's (SSHD) decision dated 25 October 2017 to refuse a human rights claim in the context of automatic deportation proceedings.
3. First-tier Tribunal Judge M.A. Khan allowed the appeal in a decision promulgated on 11 May 2018.
4. The Secretary of State made an in-time application for permission to appeal to the Upper Tribunal, but it is unclear why it took so long for the Upper Tribunal to decide the application. Upper Tribunal Judge Norton-Taylor granted permission to appeal in an order sent on 08 October 2020.
5. Upper Tribunal Judge Sheridan made further directions on 09 October 2020 in response to correspondence sent by the appellant's representative to say that his ILR had been 'restored'. The respondent subsequently filed a copy of a decision letter dated 10 June 2020 in which she stated that she was not going to pursue the revocation of his ILR. Further correspondence from the respondent to the Upper Tribunal dated 20 October 2020 stated that the Secretary of State was no longer pursuing revocation of ILR. The Upper Tribunal was invited to treat the appeal as abandoned under section 104(4A) of the Nationality, Immigration and Asylum Act 2002 ('the NIAA 2002').
6. Both parties have made written submissions asking for disposal in light of the further decision made by the respondent on 10 June 2020. Neither party has suggested that it is necessary to deal with the matter by way of an oral hearing. In light of the correspondence from both parties I am satisfied that the appeal before the Upper Tribunal can be disposed of without a hearing with reference to rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008 ('the UT Procedure Rules').
7. I find that it is not appropriate to dispose of the appeal with reference to section 104(4A) NIAA 2002 as suggested by the respondent. The appeal before the Upper Tribunal has not been brought by the appellant but by the respondent. There is already an extant First-tier Tribunal decision in relation to the appeal brought by the appellant against the decision to refuse a human rights claim. It is clear from the respondent's letter dated 20 October 2020 that she no longer seeks to challenge the First-tier Tribunal decision. In any event, and for the reasons highlighted in the post-script, it is questionable whether the appellant has been 'granted leave to enter or remain' within the meaning of section 104(4A).
8. I find that the appropriate way to dispose of the appeal is by treating the respondent as having sought permission to withdraw her case with reference to rule 17 of the UT Procedure Rules. The parties appear to agree that the matter should be subject to disposal without a hearing.
9. I consent to the Secretary of State withdrawing her case before the Upper Tribunal. The effect of the withdrawal is that the Secretary of State no

longer seeks to argue that the First-tier Tribunal decision involved the making of an error on a point of law. The decision shall stand.

Post-script

10. The respondent may need to consider whether it is sufficient to merely state that she is no longer pursuing revocation of ILR in order to give effect to the First-tier Tribunal decision. The Supreme Court decision in *R (Fitzroy George) v SSHD* [2014] UKSC 28 made clear that the effect of making a deportation order invalidated existing leave to remain and that ILR was not subsequently revived. The decision in this case was made in the context of the automatic deportation provisions contained in the UK Borders Act 2007 ('the UKBA 2007'), the statutory scheme mandates the making of a deportation order, which was signed on 25 October 2017. In light of decision in *George*, the respondent may need to consider whether she needs to formally revoke the deportation order and issue a fresh grant of ILR. Whatever decision is made must give lawful effect to the First-tier Tribunal decision.

DECISION

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

The decision shall stand

Signed M. Canavan Date 26 November 2020
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email