



**Upper Tribunal
Immigration and Asylum Chamber
Judicial Review**

Notice of Decision/Order/Directions

The Queen on the application of

Gudivara Prem Prashanth Rao

Applicant

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v

Secretary of State for the Home Department

Respondent

Decision and Directions of Mrs Justice Moulder sitting as an Upper Tribunal Judge

Upon hearing counsel for the claimant and counsel for the respondent at a hearing at Field House, Bream's Building, London EC4 1DZ on 22 January 2020;
and upon reading the witness statement filed and served on behalf of the Secretary of State dated 29 January 2020 and the written submissions filed at the direction of the court on behalf of each party subsequent to that witness statement.

It is ordered:

1. The application for judicial review is dismissed.
2. The respondent shall pay 50% of the claimant's costs of the application for judicial review.

Reasons:

1. The claimant now accepts in the light of the witness statement on behalf of the respondent dated 29 January 2020 that the judicial review claim is academic.
2. As to costs it is submitted for the claimant that the claim was only academic once the respondent set out its position following the hearing in the witness statement dated 29 January 2020.
3. The respondent submitted (in her written submissions after the hearing) that she is entitled to her costs since (*inter alia*) the matter

was academic once the decision in *Ahsan* [2017] EWCA Civ 2009 was handed down.

4. Following the decision in *Ahsan* in December 2017 and an application to appeal to the Court of Appeal for permission in these proceedings, an order was made by consent for permission for judicial review in this claim. The proceedings cannot therefore have been academic merely by reason of the decision in *Ahsan* or such an order would not have been made.
5. Once the claimant made a human rights claim and that was refused on 7 August 2019, the claimant had an in country right of appeal. At that point the claimant's judicial review on the basis that an out of country remedy was an inadequate remedy was academic.
6. Although it was submitted for the claimant at the hearing that the claimant was not seeking to rely on new grounds, the claimant in effect sought to rely on a submission that the "in country" statutory appeal was inadequate because a period of only 60 days would be granted. No application was made to amend the grounds.
7. Accordingly although the matter was advanced on that basis at the substantive hearing of the judicial review, the proper procedure for seeking permission to rely on additional grounds was not followed.
8. It was also evident that the applicant could not mount a successful judicial review challenge to the 2015 decision given the failure to pursue the earlier judicial review and this was accepted by counsel for the applicant at the hearing.
9. As to the grant of leave assuming a successful statutory appeal, the respondent has now confirmed in its witness statement that it will grant leave outside the rules for a period not exceeding 30 months and will not treat the 2015 decision as a basis for a future refusal of leave. It is submitted for the respondent that the position of the respondent in this regard should have been apparent to the claimant's representatives. However neither of these matters were addressed in the draft consent order proposed by the respondent in September 2019.
10. In the light of the failure of the applicant to make an application to amend its grounds and the fact that it could not succeed in relation to the 2015 decision, I conclude that the respondent should only be obliged to pay a proportion of the claimant's costs. I order accordingly.
11. The amount of the costs shall be assessed if not agreed.

Signed: **The Honourable Mrs Justice Moulder**

Mrs Justice Moulder, Sitting as an Upper Tribunal Judge

Dated: **07 February 2020**

Sent to the Applicant, Respondent and any interested party / the Applicant's, Respondent's and any interested party's solicitors on (date):
Home Office Ref: