JR-2022-LON-001286

In the Upper Tribunal (Immigration and Asylum Chamber) Judicial Review

In the matter of an application for Judicial Review

The King on the application of
Nicholas Grant

Applicant

versus

Secretary of State for the Home Department

Respondent

ORDER

BEFORE Upper Tribunal Judge Perkins

HAVING considered all documents lodged and having heard Mr C Emezie, solicitor advocate from Chipatiso Associates LLP instructed by the applicant and Mr D Manknell of counsel, instructed by GLD, for the respondent at a hearing on 16 June 2023

IT IS ORDERED THAT:

(1) The application for judicial review is refused for the reasons set out in attached extempore judgment.

(2) The Applicant will pay the Respondent's costs to be assessed if not agreed.

(3) Permission to appeal to the Court of Appeal is refused because I see no arguable error of law in my decision.

Signed: Jonathan Perkins

Upper Tribunal Judge Perkins

Dated: **29 June 2023**

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date):

Solicitors:
Ref No.
Home Office Ref:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a point of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).

Case No: JR-2022-LON-001286

IN THE UPPER TRIBUNAL

(IMMIGRATION AND ASYLUM CHAMBER)

Field House,

Breams Buildings

London, EC4A 1WR

Extempore Judgment

Before:

UPPER TRIBUNAL JUDGE PERKINS

- -

Between:

THE KING

on the application of

NICHOLAS GRANT

Applicant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

- -

Mr C Emezie, Solicitor Advocate

(from Chipatiso Associates LLP), for the applicant

Mr D Manknell, of Counsel

(instructed by the Government Legal Department) for the respondent

Hearing date: 16 June 2023

- - - - - - - - - - - - - - - - - - - -

J U D G M E N T

- - - - - - - - - - - - - - - - - - - -

Judge Perkins:

1. It is customary for me to begin my judgments by identifying the decision, or indecision, which was the subject of complaint but that approach does not work here because the true nature of the dispute did not become apparent to me until during the course of the hearing.

2. When the application was first made on the papers it was dealt with by Upper Tribunal Judge Allen. He clearly thought that he was responding to an application complaining about something that happened ten or eleven years ago and his main reason for refusing permission was that the application was way out of time and in any event was a misconceived application because it was based on a misunderstanding of the nature of a deportation order.

3. The application was orally renewed and the oral renewal hearing was heard by Upper Tribunal Gleeson. Judge Gleeson gave permission. I mean Judge Gleeson no disrespect when I say that I found that a surprising decision when I read the papers and I do not feel embarrassed to make that observation because, now that I understand what has happened, I think it is probably Judge Gleeson's position that she too was rather surprised. Indeed, in her order she made it plain that she would not have given permission but for one thing.

4. The one thing that made a difference was something that emerged during submissions before her from Mr Emezie and it was that the true nature of the complaint was not the one set out in the pleadings at all but a complaint that the Secretary of State had not responded to submissions made on, I think, 3 December 2021. The basic complaint was that the applicant was out of the United Kingdom and wanted to return and had made an application for permission to enter the United Kingdom in in a slightly irregular way. He claimed, for various reasons that I do not think important now, that he should be excused costs and for whatever reason this was not picked up by the Secretary of State and that was the true nature of his complaint. That much was confirmed by Mr Emezie today. In fact, I think it fair to say, it was confirmed rather passionately because he

said that was precisely why Judge Gleeson made the order and, he said, once that was appreciated by the Secretary of State, the Secretary of State responded appropriately by agreeing to deal with that application.

5. I find it astonishing that that action did not stop there. The pleaded case remains an unarguable case relating to something that happened or did not happen over ten years ago. The grievance identified by the applicant has now been addressed. It seems to me absolutely beyond argument that at that point the application should have been withdrawn and there could have been possible arguments about costs. That did not happen and we had a hearing today.

6. When we came to the hearing the Secretary of State applied for me to strike out the application, basically because directions had not been followed. Mr Emezie resisted that but agreed that there was no point in continuing with the hearing. The applicant he said had got what he wanted and he said had won the judicial review proceedings.

7. Against that background Mr Manknell withdrew the application that the action be struck out and asked instead for an order that the judicial review claim be dismissed.

8. I dismiss the claim; it is serving no useful purpose whatsoever; neither party wants to continue; everybody agrees that the true grievance having been identified has now been addressed as far as it can be by the Secretary of State. Whether the outcome will be satisfactory and whether that will result in further proceedings is something that will be detected in due course, it is not something for me.

9. I make it plain therefore that the Secretary of State has her costs after the Secretary of State's decision to give the applicant essentially what it emerged that he sought during the hearing before Judge Gleeson.

10. The applicant was told on 30 March that there would be a response to that letter and after that there should have been no further action except to dispose of this application. The applicant, on his own admission through his representative this morning, has accepted that that was giving him what he really wanted. However, it does not follow from this that the applicant is entitled to any costs or should avoid paying the costs for any work before then. Mr Emezie argues that the Secretary of State should have had regard to the letter setting out the true nature of the claim and says, although he has produced no authority for this, that such letters are to be regarded as part of the pleadings. I cannot accept that without reference to the authority relied on; a letter is a letter, pleadings are pleadings, they are not the same. It is quite obvious to me that the Secretary of State incurred costs because the applicant did not say what he wanted. What he wanted was something that was made plain only in the orally renewed hearing. The applicant never sought to amend the grounds or otherwise make clear that the pleadings were completely unreliable. By that time in any event costs had been incurred in responding to what, as seems to be plainly accepted, was not the applicant's case but was something else altogether. I see no reason why the Secretary of State should be put to expense and the applicant should bear all of the costs, costs until 30 March because the pleaded case was simply not what he wanted and was not arguable and

could not succeed and after that because the Secretary of State having been told what the case was really about agreed to deal with it. It might be the case that the Secretary of State can be criticised for not picking up on the letter, it has not been established when that letter was actually received, merely that it was at some point, but that is not the point. People should set out in their claim what their case is, that is the point of pleading and legal costs are incurred as a result of the case that was pleaded and it was not the case on which the applicant relied and not the case on which he succeeded, it was a different point.

11. It follows therefore that for the reasons I have given the applicant's case is dismissed and I find the applicant should pay all of the Secretary of State's costs to be assessed if not agreed.

12. I have made the distinction between the two periods of time in case it attracts attention elsewhere when my full reasoning might have to be considered but that is the decision that I make.

~~~~0~~~~
~~~~