Upper Tribunal
(Immigration and Asylum Chamber)

EH (PTA: limited grounds; Cart JR) Bangladesh [2021] UKUT 0117 (IAC)

THE IMMIGRATION ACTS

Heard at Field House by *Skype*	**Decision & Reasons Promulgated**
On 24 March 2021	**28 April 2021**
Further submissions on 31 March 2021	

Before

THE HON. MR JUSTICE LANE, PRESIDENT
MR C M G OCKELTON, VICE PRESIDENT

Between

EH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant:	Mr M Symes and Ms A Nizami, instructed by Duncan Lewis Solicitors
For the respondent:	Mr T Lindsay, Senior Home Office Presenting Officer

(1) When the Upper Tribunal grants permission to appeal from the First-tier Tribunal, even on limited grounds, its decision is not amenable to judicial review under the Cart procedure, which, as specifically indicated by CPR 54.7A, is available only when the Upper Tribunal refuses permission.

(2) Rule 22(2)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008 has the effect that in the absence of any direction limiting the grounds which may be argued before the Upper Tribunal, the grounds contained in the application for permission are the grounds of appeal to the Upper Tribunal, even if permission is stated to have been granted on limited grounds.

(3) Rule 22(2)(b) has the complementary effect that any limitation on the grounds of appeal must be by direction and, as a direction, can be the subject of an application to amend, suspend or set aside that direction under rule 5(2) of the 2008 Rules.

DECISION AND REASONS

A. THE APPELLANT AND HIS APPEAL

1. On 15 January 2020, the First-tier Tribunal heard the appeal of the appellant, a citizen of Bangladesh, against the decision of the respondent to deport him to Bangladesh. On 19 December 2007, the appellant had killed his wife in the United Kingdom and on 1 December 2008 he was convicted of murder and sentenced to life imprisonment, with a recommendation that he serve a minimum of twelve years before release. The appellant made a protection claim, asserting that he would be at real risk of serious harm, if returned to Bangladesh, because his late wife's family would kill him there. Second, he said that he had converted from Islam to Christianity and so would be at real risk of serious harm in Bangladesh as an apostate. Third, the appellant claimed that he was bisexual and wanted to live openly as such, but that he would be at real risk of serious harm, if he did so in Bangladesh. The respondent refused the appellant's protection claim and the appellant exercised his right of appeal to the First-tier Tribunal.

2. On 4 February 2020, following a hearing the previous month, the First-tier Tribunal promulgated a decision, dismissing the appellant's appeal on asylum and human rights grounds. He sought permission to appeal on seven grounds. On 3 March 2020, the First-tier Tribunal refused permission to appeal. The appellant then renewed his application to the Upper Tribunal, on each of the seven grounds.

3. On 26 May 2020, Upper Tribunal Judge Sheridan made a decision as follows: "Application for permission to appeal is **granted** in respect of **Grounds 4 and 7** only" (original emphasis).

B. THE JUDICIAL REVIEW

4. CPR 54.7A(1) provides as follows:-

> "**Judicial review decisions of the Upper Tribunal**
>
> 54.7A-(1) This rule applies where an application is made, following refusal by the Upper Tribunal of permission to appeal against a decision of the First-tier Tribunal, for judicial review –
>
> (a) of the decision of the Upper Tribunal refusing permission to appeal; or
>
> (b) which relates to the decision of the First Tier Tribunal which was the subject of the application for permission to appeal" (our emphasis).

5. On 6 July 2020, the appellant applied for permission to judicially review UTJ Sheridan's decision. Paragraph 1 of the Statement of Facts and Grounds that accompanied the application stated that UTJ Sheridan had "granted permission to appeal in respect of two grounds, grounds 4 and 7, and refused permission on all other grounds". Under the heading "Relief sought", however, the application stated that what was requested was "an order quashing the permission decision of UTJ Sheridan granting permission only on limited grounds", together with "an order that permission to appeal to the Upper Tribunal be granted on the grounds which were refused by the Upper Tribunal".

6. On 28 August 2020, the High Court granted permission to bring judicial review. In the High Court's order, under the heading "Observations", there is the following:-

> "CPR 54.7A applies to this case.
>
> I consider that the grounds advanced are arguable and have a reasonable prospect of success, and that the case raises an important point or practice (particularly the need to address the question of why a person might be discreet about their sexuality/religion), and that there is a compelling reason for the grounds of appeal to be heard given that permission has been granted on other grounds such that an appeal will be heard in any event, and it is unlikely that these additional grounds will significantly add to the time required for the appeal."

7. On 15 February 2021, Master Gidden, having noted that no request had been made under CPR 54.7A(9) for a substantive hearing, ordered that "the decision of the Upper Tribunal to refuse permission to appeal is quashed".

C. THE UPPER TRIBUNAL HEARING

8. On 25 February 2021, the Vice President of the Upper Tribunal Immigration and Asylum Chamber issued directions, as follows:-

"1. This appeal will be listed for a hearing by remote means on 24 March 2021 at 10.30. A Notice of Hearing, with joining instructions will be sent out shortly.

2. The parties must on that occasion be prepared to make submissions before a senior panel on the effects of rules 22(2) and 5(2) of the Upper Tribunal Procedure Rules in this case and generally; on the effect of the Order of the High Court in this case, and on the further progress of this appeal."

9. On 24 March, Mr Symes appeared for the appellant. Mr Symes had not previously been involved in the appeal. He prepared a helpful skeleton argument, for which we are grateful. We heard oral submissions from Mr Symes and Mr Lindsay. Following the hearing, the parties were given the opportunity to file and serve further written submissions on the question of whether it is possible or necessary to bring a "Cart" judicial review challenge in the event of a partial or limited grant of permission by the Upper Tribunal. Mr Lindsay informed us that no such submission would be made by him. For the appellant, Mr Symes and Ms Nizami filed written submissions on 31 March 2021, which we have found helpful.

D. LEGISLATION

(a) Tribunals, Courts and Enforcement Act 2007

10. So far as relevant, sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007 provide as follows:-

"**11. Right to appeal to Upper Tribunal**

(1) For the purposes of subsection (2), the reference to a right of appeal is to a right to appeal to the Upper Tribunal on any point of law arising from a decision made by the First-tier Tribunal other than an excluded decision.

(2) Any party to a case has a right of appeal, subject to subsection (8).

(3) That right may be exercised only with permission (or, in Northern Ireland, leave).

(4) Permission (or leave) may be given by—

(a) the First-tier Tribunal, or

(b) the Upper Tribunal, on an application by the party.

…

13. Right to appeal to Court of Appeal etc.

(1) For the purposes of subsection (2), the reference to a right of appeal is to a right to appeal to the relevant appellate court on any point of law arising

from a decision made by the Upper Tribunal other than an excluded decision.

(2) Any party to a case has a right of appeal, subject to subsection (14).

(3) That right may be exercised only with permission (or, in Northern Ireland, leave).

(4) Permission (or leave) may be given by—

(a) the Upper Tribunal, or

(b) the relevant appellate court, on an application by the party.

…

(8) For the purposes of subsection (1), an 'excluded decision' is—

…

(c) any decision of the Upper Tribunal on an application under section 11(4)(b) (application for permission or leave to appeal),

…"

(b) Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

11. The following provisions of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 are relevant for our purposes:-

"**Application for permission to appeal to the Upper Tribunal**

33.—(1) A party seeking permission to appeal to the Upper Tribunal must make a written application to the Tribunal for permission to appeal.

…

Tribunal's consideration of an application for permission to appeal to the Upper Tribunal

34.—(1) On receiving an application for permission to appeal the Tribunal must first consider whether to review the decision in accordance with rule 35.

(2) If the Tribunal decides not to review the decision, or reviews the decision and decides to take no action in relation to the decision, or part of it, the Tribunal must consider whether to give permission to appeal in relation to the decision or that part of it.

(3) The Tribunal must send a record of its decision to the parties as soon as practicable.

(4) If the Tribunal refuses permission to appeal it must send with the record of its decision—

(a) a statement of its reasons for such refusal; and

(b) notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the manner in which, such application must be made.

(5) The Tribunal may give permission to appeal on limited grounds, but must comply with paragraph (4) in relation to any grounds on which it has refused permission."

(c) Tribunal Procedure (Upper Tribunal) Rules 2008

12. For our purposes, the following are the relevant provisions of the Tribunal Procedure (Upper Tribunal) Rules 2008:-

"**Case management powers**

5.—(1) Subject to the provisions of the 2007 Act and any other enactment, the Upper Tribunal may regulate its own procedure.

(2) The Upper Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Upper Tribunal may—

…

(c) permit or require a party to amend a document;

…

Application to the Upper Tribunal for permission to appeal

21.—(1) …

(2) A person may apply to the Upper Tribunal for permission to appeal to the Upper Tribunal against a decision of another tribunal only if—

(a) they have made an application for permission to appeal to the tribunal which made the decision challenged; and

(b) that application has been refused or has not been admitted or has been granted only on limited grounds.

...

Decision in relation to permission to appeal

22.—(1) Except where rule 22A (special procedure for providing notice of a refusal of permission to appeal in an asylum case) applies, if the Upper Tribunal refuses permission to appeal [or refuses to admit a late application for permission], it must send written notice of the refusal and of the reasons for the refusal to the appellant.

(2) If the Upper Tribunal gives permission to appeal—

(a) the Upper Tribunal must send written notice of the permission, and of the reasons for any limitations or conditions on such permission, to each party;

(b) subject to any direction by the Upper Tribunal, the application for permission to appeal stands as the notice of appeal and the Upper Tribunal must send to each respondent a copy of the application for permission to appeal and any documents provided with it by the appellant; and

…

(3) Paragraph (4) applies where the Upper Tribunal, without a hearing, determines an application for permission to appeal-

(a) against a decision of—

(i) the Tax Chamber of the First-tier Tribunal;

(ii) the Health, Education and Social Care Chamber of the First-tier Tribunal;

(iia) the General Regulatory Chamber of the First-tier Tribunal;

(iib) the Property Chamber of the First-tier Tribunal;

(iii) the Mental Health Review Tribunal for Wales; or

(iv) the Special Educational Needs Tribunal for Wales; or

(b) under section 4 of the Safeguarding Vulnerable Groups Act 2006.

(4) In the circumstances set out at paragraph (3) the appellant may apply for the decision to be reconsidered at a hearing if the Upper Tribunal—

(a) refuses permission to appeal or refuses to admit a late application for permission; or

(b) gives permission to appeal on limited grounds or subject to conditions.

(5) An application under paragraph (4) must be made in writing and received by the Upper Tribunal within 14 days after the date on which the Upper Tribunal sent written notice of its decision regarding the application to the appellant.

Notice of appeal

23.—(1) …

(1A) In an asylum case or an immigration case in which the First-tier Tribunal has given permission to appeal, subject to any direction of the First-tier Tribunal or the Upper Tribunal, the application for permission to appeal sent or delivered to the First-tier Tribunal stands as the notice of appeal and accordingly paragraphs (2) to (6) of this rule do not apply.

…"

E. DISCUSSION

13. The first issue is to determine the effect of what happened in the High Court in the proceedings under CPR 54.7A. Until that is done, it is not possible to establish the current position in these appeal proceedings. As we have seen, CPR 54.7A(1) states in terms that the rule applies "following refusal by the Upper Tribunal of permission to appeal against the decision of the First-tier Tribunal". It is plain that the High Court was aware of the fact that permission to appeal to the Tribunal had been granted by Upper Tribunal Judge Sheridan. Indeed, that fact was part of the court's rationale for deciding the second appeal criteria were satisfied, in that "an appeal will be heard in any event, and it is unlikely that these additional grounds will significantly add to the time required for the appeal". This reasoning might, with respect, be considered problematic, in that it would render the second appeal criteria in 54.7A(7)(b) otiose, in all cases in which the judicial review challenge is to the rejection of some, but not all, of the grounds of appeal to the Upper Tribunal.

14. That problem is, however, subsumed in the larger question of whether CPR 54.7A has any application at all, where the Upper Tribunal has granted permission to appeal from the First-tier Tribunal. As can be seen from rule 22 of the Upper Tribunal Rules, the legislature contemplates that the Upper Tribunal can respond to an application for permission to appeal from the First-tier Tribunal in three ways. It can:-

(1) give permission to appeal;

(2) refuse permission to appeal; or

(3) refuse to admit a late application for permission to appeal.

15. In the case of certain applications for permission, described in rule 23(3)(a), an appellant may apply for a decision taken without a hearing to be reconsidered at a hearing. Rule 22(4)(a) provides that this may occur where the Upper Tribunal refuses permission or refuses to admit a late application. Rule 22(4)(b) is significant for our purposes, in that it gives a right to reconsideration where the Upper Tribunal "gives permission to appeal on limited grounds or subject to conditions". This means, in our view, that it is not possible to extrapolate from rule 22 any inference that the legislature contemplated that a limited grant of permission can be treated as a refusal of permission. On the contrary, it is quite clear that, according to the Rules, a grant is a grant, whether limited or not; and whether or not subject to conditions. Unlike the CPR, the Upper Tribunal Rules have Parliamentary authority.

16. It is necessary to compare the position under the Upper Tribunal Rules with that in the First-tier Tribunal Rules. As we have seen, rule 34 of those Rules specifically requires the First-tier Tribunal, if giving permission to appeal on limited grounds, to comply with rule 34(4) in relation to any grounds on which it has refused permission. In respect of such grounds, the First-tier Tribunal must send "notification of the right to make an application to the Upper Tribunal for permission to appeal". This ties directly into rule 21(2)(b) of the Upper Tribunal Rules, which expressly contemplates an application for permission to appeal where the First-tier Tribunal has granted permission "only on limited grounds". Paragraphs 48 and 49 of the *Joint Presidential Guidance 2019 No 1: Permission to appeal to UTIAC* deal with "limited or restricted grounds" of permission. In paragraph 48, reference is made, in the context of rule 21(2)(b), to permission having been "refused on some grounds". Whilst that formulation is unobjectionable in that context, it is not, of course, dispositive of the general meaning and effect of a permission granted on limited grounds.

17. It could, nevertheless, be argued that the very fact that the "permission interface" between the First-tier Tribunal and the Upper Tribunal expressly caters for a means of challenging a limited grant of permission requires an expansive reading of CPR 54.7A(1) in which, despite the wording of rule 22 of the Upper Tribunal Rules, a judicial review may be brought in the High Court, where the Upper Tribunal has granted permission to appeal on limited grounds. At paragraph 26 below, we deal with a case in which the Court of Appeal dealt with a challenge of this kind. It is, however, necessary first to address the genesis of CPR 54.7A.

18. Some support for the expansive reading just described might be said to lie in the actual case which led to the creation of the procedure in CPR 54.7A and which has, in practice, given its name to that procedure: R (Cart) v the Upper Tribunal and R (MR) Pakistan v the Upper Tribunal ((Immigration and Asylum Chamber) and Secretary of State for the Home Department [2011] UKSC 28; [2011] Imm AR 704. As is plain from paragraph 3 of the judgment of Lady Hale, Mr Cart's judicial review was brought against the refusal by the Upper Tribunal Administrative Appeals Chamber of permission to appeal on one of four grounds. Since CPR 54.7A was introduced to give effect to the judgments in Cart, it could, therefore, be said to be wrong to read the words "refusal by the Upper Tribunal of permission to appeal" as excluding cases where the Upper Tribunal has granted permission on limited grounds.

19. There are, however, powerful arguments in favour of the opposite conclusion, which are, in our view, persuasive. The judgments in Cart show the Supreme Court was anxious that judicial review of the Upper Tribunal's permission to appeal functions should be kept in narrow bounds. Although the case itself concerned a limited grant of permission, the wording of CPR 54.7A shows an appreciation of the important fact that the right of challenge to a decision of the Upper Tribunal in this area is needed where that decision disposes of the appeal proceedings. A limited grant of permission does not dispose of the appeal proceedings. There is still an appeal to be decided by the Upper Tribunal, which:

(1) is not jurisdictionally circumscribed by the terms of the grant of permission; and

(2) is subject to onward rights of appeal under section 13 of the 2007 Act.

20. We shall deal first with the jurisdictional position. Rule 22(2)(b) of the Upper Tribunal states that, subject to any direction by that Tribunal, the application for permission to appeal stands as the notice of appeal. What this means is that unless the Upper Tribunal makes such a direction, then, even if it has granted permission to appeal only on limited grounds, the notice of appeal puts all of the grounds at issue in the Upper Tribunal proceedings. In the present case, there was no such direction. The High Court was, therefore, being asked to adjudicate on a non-existent issue.

21. It is instructive at this point to look beyond the immigration and asylum jurisdiction of the Upper Tribunal. At paragraph 4.214 of *Jacobs*: *Tribunal Practice and Procedure* (5th Edition, 2019), the author considers that "the power to give permission on limited grounds may not be of practical significance". The authority for this statement is paragraph 3 of the Upper Tribunal Administrative Appeal Chamber's decision in DL-H v Devon Partnership NHS Trust [2010] UKUT 102 (AAC), where it held as follows:-

> "3. I reject the argument that an appeal is necessarily limited to the grounds in the application on which permission was given and that further permission is required to raise other grounds. The right of appeal is conferred by section 11 of the Tribunals, Courts and Enforcement Act 2007. It is discretionary and subject to the grant of permission. Permission is governed by the rules of procedure. The rules contain three provisions for restricting the scope of an appeal: (i) limited permission; (ii) the control of the issues on which the tribunal requires submissions; and (iii) the power to strike out a party's case. The rules confer power on the First-tier Tribunal to give permission only on limited grounds: rule 47(5) of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (SI No 2699). The Upper Tribunal has equivalent power in respect of an appeal to the Court of Appeal on limited grounds: rule 45(5) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI No 2698). There is no express power for the Upper Tribunal to give limited permission to appeal to itself. However, the rules envisage this possibility: rule 22(4)(b). This is, presumably, permissible without express authority and in the exercise of the tribunal's discretion. The rules must be interpreted and applied to give effect to the overriding objective under rule 2. As a matter of interpretation, it would not be fair and just to restrict the scope of an appeal to the grounds in the application on which permission was given. The rules apply to the whole of the work of the Upper Tribunal, not just mental health. The Secretary of State for Work and Pensions is the respondent to the vast majority of appeals before the

> Administrative Appeals Chamber and takes a neutral and objective approach to appeals, often identifying issues favourable to a claimant. It would not be desirable to hinder that approach, as many appellants are either not represented at all or not professionally represented. Mental health cases are different in that the patient is usually professionally represented. But it is not possible, as a matter of interpretation, to draw a distinction on that ground. That is a matter, if it is relevant at all, for the application of the rules. My interpretation does not allow a party complete freedom to raise additional grounds at will. The Upper Tribunal has ample power to control the issues that will be considered on an appeal. As well as the possibility of giving limited permission, rule 15(1)(a) authorises the tribunal to give directions as to the issues on which it requires submissions. In an extreme case, the tribunal may even strike out all or part of a party's case under rule 8(3). Those provisions should be sufficient to ensure that additional grounds are only considered if that would be fair and just."

22. There are nuanced differences between the Administrative Appeals Chamber and the Immigration and Asylum Chamber, which were explored by the latter in Ferrer (limited appeal grounds; *Alvi*) [2012] UKUT 304 (IAC). Notwithstanding these, and leaving aside the fact that, in an immigration and asylum appeal, the power to strike out is extremely circumscribed, the basic point made in DL-H holds good in the Immigration and Asylum Chamber. There is no relevant jurisdictional fetter upon the Upper Tribunal's consideration of an appeal from the First-tier Tribunal. The scope of the appeal is subject to procedural constraints. Those constraints must be exercised compatibly with the overriding objective in rule 2. The power to give directions in rule 5(2) expressly includes the power to make "a direction amending, suspending or setting aside an earlier direction". Whilst that power must, of course, be exercised on a principled basis, the overall position in the Upper Tribunal is such that an appellant who has been subjected to a grant of permission on limited grounds does not, as a general matter, need to resort to the Administrative Court. That is so, even if there has been a direction of the kind contemplated by rule 22(2)(b).

23. In so finding, we are cognisant of the judgment of the Court of Appeal in Sarkar and another v Secretary of State for the Home Department [2014] EWCA Civ 195; [2014] Imm AR 911. In that case, the Upper Tribunal granted permission to appeal on a ground relating to section 47 of the Immigration, Asylum and Nationality Act 2006. In his reasons for granting permission, Upper Tribunal Judge Spencer said he had taken the provisional view that the appeals should be allowed on this limited basis. The appellants' application for permission had, in fact, included a ground based on Article 8 of the ECHR. Neither the appellants nor the respondent responded to the Upper Tribunal's invitation to react to the judge's provisional view, with the result that he proceeded to set aside the First-tier Tribunal judge's decision and re-make the decision in the appeal, by allowing it on the section 47 ground.

24. The appellants obtained permission to appeal to the Court of Appeal, contending that the Upper Tribunal should have dealt with the Article 8 issue. Giving the only reasoned judgment, Moore-Bick LJ said:

> "17. In the present case the apparently unqualified grant of permission to appeal must be read in the context of the reasons which Judge Spencer gave for his decision, which make it quite clear that he intended to limit it to the ground that he had

> identified based on section 47 of the Immigration, Asylum and Nationality Act 2006. I accept that the Upper Tribunal could have granted permission to appeal in respect of the question whether the First-tier Tribunal ought to have considered the article 8 claim (that being the only relevant point of law arising from the decision of the First-tier Tribunal) and if it had done so would have had jurisdiction to decide that question. In fact, however, it is clear from the order that Judge Spencer was refusing to grant permission to appeal on the article 8 ground. I also accept that in an appropriate case the tribunal has jurisdiction to consider new points that have not been included in an appellant's original grounds of appeal – see *DL-H v Devon Partnership NHS Trust* [2010] UKUT 102 (AAC) at paragraph 3 – but that is not the same as saying that the tribunal can re-open a decision refusing permission to appeal on a particular ground. I am inclined to think that Mr. Roe was right in submitting that, having refused an application for permission to appeal in relation to the article 8 claim, it was no longer open to the Upper Tribunal to entertain it, but it is unnecessary to reach a final view on that question for the purposes of the present appeal, since, for the reasons I have already given, I am satisfied that the grant of permission was limited to the sole ground on which the appeal was allowed. In any event, if, as I think, the tribunal was entitled to refuse permission to appeal on the article 8 ground, I can see no basis for suggesting that it committed an error of law in failing to deal with it."

25. As can immediately be seen, Moore-Bick LJ's observations on the jurisdictional position of the Upper Tribunal were *obiter*. It does not appear that the court was referred to the relevant provisions of the Upper Tribunal Rules, which we have set out above. The case is, nevertheless, instructive, in that it highlights the second reason given in paragraph 19 above why judicial review of a limited grant of permission by the Upper Tribunal is unnecessary; namely, because a party who is dissatisfied with the way in which the Upper Tribunal has acted under its procedural powers to limit the scope of the appeal may apply for permission to appeal to the relevant appellate court against the resulting substantive decision.

26. Finally, mention must be made of the case foreshadowed in paragraph 17 above: JH (Palestinian Territories) v Upper Tribunal (Immigration Asylum Chamber) and Secretary of State for the Home Department [2020] EWCA Civ 919. The judgment of the Court of Appeal concerned the position in costs, following a judicial review brought pursuant to CPR Rule 54.7A. The judicial review proceedings involved the challenge to a decision of the Upper Tribunal, refusing permission to appeal in respect of grounds that had been rejected by the First-tier Tribunal and which were then subject to an application to the Upper Tribunal, pursuant to rule 34(4)(b) of the First-tier Tribunal Rules and rule 21(2)(b) of the Upper Tribunal Rules. The Court of Appeal judgments did not address the question of whether CPR 54.7A is appropriate in this situation. Although the points we have made regarding the nature and scope of appeals in the Upper Tribunal apply equally where that Tribunal is seized of an appeal that has come to it following a limited grant for permission by the First-tier Tribunal, the fact that rule 21(2)(b) of the Upper Tribunal Rules provides expressly for a right of application for permission to appeal to the Upper Tribunal on this discrete basis may mean that, anomalously, a refusal by the Upper Tribunal at that

stage to expand the limited grounds is to be treated as on all fours with an outright refusal of permission. We do not, however, consider that JH means the words "refusal … of permission to appeal" in CPR 54.7A must be generally read as including a grant of permission to appeal.

27. Although both members of the present panel sit in the Administrative Court, we are, of course, here acting as judges of the Upper Tribunal. Our analysis of the ambit of CPR 54.7A has been necessitated by the fact that, in order to give effect to the High Court's decision in the judicial review, we have had to establish the nature and effect of that decision. In the light of the conclusions we have reached, the decision of the Master to order that "the decision of the Upper Tribunal to refuse permission to appeal is quashed" cannot be read as it stands, because there was no such decision. Since the only decision of the Upper Tribunal was to grant permission on limited grounds, it would seem the only way of giving express effect to the Master's order would be to treat it as having quashed the Upper Tribunal's grant of permission.

28. It is unnecessary for us to have to adopt such a course. This is because, there being no direction to the contrary, the appellant's grounds of appeal, in their entirety, stand as the grounds of appeal to the Upper Tribunal. Since that is the outcome the High Court envisaged, an express acknowledgment of that fact by this Tribunal accords proper respect to the proceedings in the High Court. And since that also coincides with the appellant's aim, and is not opposed by the respondent, we hereby formally record that the appellant may advance all his grounds of appeal at the forthcoming hearing in the Upper Tribunal. If we are wrong, and it is necessary for the Upper Tribunal to grant permission, we do so on that basis.

29. We can sum up the position as follows:

(1) When the Upper Tribunal grants permission to appeal, even on limited grounds, its decision is not amenable to judicial review under the Cart procedure, which, as specifically indicated by CPR 54.7A, is available only when the Upper Tribunal refuses permission.

(2) Rule 22(2)(b) of the Upper Tribunal Rules has the effect that in the absence of any direction limiting the grounds which may be argued before the Upper Tribunal, the grounds contained in the application for permission are the grounds of appeal to the Upper Tribunal, even if permission is stated to have been granted on limited grounds.

(3) Rule 22(2)(b) has the complementary effect that any limitation on the grounds of appeal must be by direction and, as a direction, can be the subject of an application to amend, suspend or set aside that direction under rule 5(2).

30. As envisaged in the further submissions of 31 March, this case affords an opportunity to explain why it is inappropriate to seek to challenge in the High Court by way of judicial review the Upper Tribunal's limited grant of permission to appeal. Those acting for the appellant at the relevant time did not, of course, have the benefit

of the analysis we have set out above; and we are fully satisfied that they acted in good faith in furtherance of the best interests of the appellant. For the future, however, practitioners will be expected to be mindful of this decision.

31. The appeal will be listed for hearing in the Upper Tribunal.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Mr Justice Lane

28 April 2021

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber