



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

Appeal Number: AA/08192/2009

THE IMMIGRATION ACTS

**Heard at Field House
On 3 October 2014**

**Decision Promulgated
On 7th October 2014**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

**RG
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R. Toal, Counsel instructed by Wilson Solicitors
For the Respondent: Mr P. Duffy, Home Office Presenting Officer

**DECISION UNDER RULE 17 OF THE TRIBUNAL PROCEDURE (UPPER
TRIBUNAL) RULES 2008**

1. On the above date I provided to the parties a rough and incomplete draft of this decision, showing only the bare bones of what I proposed to record, so as to allow for any comments or submissions by the parties. It was drafted after the issues referred to in it had been canvassed. As

now written, it does not precisely mirror the draft that was shown to the parties, it now being the completed document. However, subject possibly to the last paragraph that refers to SM (withdrawal of appealed decision: effect) Pakistan [2014] UKUT 00064 (IAC), nothing of substance has been changed, this final document making minor grammatical and other inconsequential corrections or additions.

2. This appeal came before me on the above date for a case management hearing, it having previously been listed for a substantive hearing on asylum and human rights grounds against a decision to refuse leave to enter the UK.
3. The further background and history of the appeal need not be rehearsed here. Suffice to say there has been an appeal before the First-tier Tribunal, with further proceedings in the Upper Tribunal, then the Court of Appeal, with the appeal then remitted to the Upper Tribunal for re-hearing. It was originally thought that the appeal would be suitable for country guidance in relation to, very broadly put: honour killings in Turkey.
4. At the hearing before me, the Secretary of State considered that it was appropriate for the decision to be withdrawn. That is a decision to refuse leave to enter dated 31 July 2009, a decision predicated on the refusal of the appellant's claim for asylum.
5. As was canvassed at the hearing before me however, the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the 2008 rules") do not make provision for the Secretary of State to withdraw a decision. Of course, it is a matter for the Secretary of State if she wishes to withdraw a decision but the effect so far as the Upper Tribunal is concerned in terms of an appeal is governed by the 2008 rules. The draft quoted an earlier version of the 2008 rules. Rule 17, as amended, provides as follows:
 - "17.-(1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it –
 - (a) by sending or delivering to the Upper Tribunal a written notice of withdrawal; or
 - (b) orally at a hearing.
 - (2) Notice of withdrawal will not take effect unless the Upper Tribunal consents to the withdrawal except in relation to an application for permission to appeal."
6. I gave my consent to the withdrawal of the Secretary of State's case, that case being that the appellant is not entitled to leave to enter. The parties were in agreement that the effect of the withdrawal of the Secretary of State's case (founded on the immigration decision) is that a further decision will be made taking into account the history of the

appeal proceedings and the up-to-date position in relation to the appellant's family and personal circumstances in the UK.

7. It was agreed on behalf of the respondent that any new decision will take as part of the agreed factual background the matters set out in the appellant's witness statement dated 30 October 2009, and stated in Immigration Judge Elek's determination at [8] to have been signed before her on 3 November 2009. It was accepted on behalf of the Secretary of State before me by Mr Duffy in the light of the findings made by Judge Elek, which were considered by Laws LJ in his judgment following the hearing before him on 11 November 2010, reported as RG (Turkey) [2010] EWCA Civ 1510, that that witness statement is agreed and accepted as to its facts. That is the case except in so far as the witness statement makes assertions as to actual or established risk on return.
8. This decision of the Upper Tribunal however, does not purport to make any factual findings or to make any decisions on the merits of any asylum or human rights claim.
9. I refer at [1] above to the decision in SM, which having reminded myself of it after the hearing, it is as well to flag it up for the parties' consideration. I am inclined to the view that that decision does not require the Upper Tribunal to do, or decide, anything further in this case, and in the light of the complete agreement between the parties does not affect this written decision. If either party takes a different view, that party should make any written representations on the point no later than 14 days after this Decision is sent out.

Upper Tribunal Judge Kopieczek

3/10/14