



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

Appeal Number: IA/12230/2014

THE IMMIGRATION ACTS

Heard at Field House

On 28 January 2015

Determination

Promulgated

On 30 January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS TASNIM SHAHEEDA SELEMAN
(NO ANONYMITY DIRECTION MADE)**

Respondent/Claimant

Representation:

For the Appellant: Ms Kenny, Specialist Appeals Team

For the Respondent: None

DECISION AND REASONS

1. The SSHD appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Majid sitting at Taylor House on 3 October 2013) allowing the claimant's appeal against the decision by the Secretary of State to refuse to grant her indefinite leave to remain on UK ancestry grounds under paragraph 193 of the rules, with reference to paragraph 192(i) and paragraph 186(iii) of HC 395 (as amended).
2. The sole ground of appeal is that the judge wrongly allowed the appeal despite Counsel for the SSHD at the outset of the hearing withdrawing the decision appealed against on instructions from the Home Office.

3. Permission to appeal on this ground was granted by a First-tier Tribunal judge on 26 November 2014, and in a letter on file sent to the Upper Tribunal the claimant's solicitors have agreed that Judge Majid was wrong to allow the appeal after the decision had been withdrawn. They report that the SSHD has since issued a fresh refusal decision, which their client is now appealing.

Reasons for finding an Error of Law

4. The stance now taken by the claimant's solicitors is not determinative of the error of law question, but having exercised my own judgment on the matter I am satisfied that the concession is rightly given.
5. The hearing took place shortly before the introduction of the new procedure rules on 20 October 2014. Under the new procedure rules the SSHD has to justify a late withdrawal such as occurred here. But under the 2005 procedure rules which continued to apply as of 3 October 2014 the judge did not have discretion to reject the notification of withdrawal on the ground that its effect was to deny the claimant a fair hearing. Rule 17 (2) was expressed in mandatory terms: "an appeal shall be treated as withdrawn if the respondent notifies the Tribunal that the decision to which the appeal relates has been withdrawn."
6. Accordingly the judge had no jurisdiction to proceed with the hearing of the appeal after Counsel for the SSHD announced that the decision was withdrawn; and he had no jurisdiction to allow the appeal.
7. The First-tier Tribunal at Taylor House should have served on the parties a notice that this appeal has been recorded as withdrawn, pursuant to Regulation 17(3) of the 2005 Rules. This procedural step is not however necessary now, as both parties accept that the decision appealed against has been withdrawn.

Decision

8. The decision of the First-tier Tribunal allowing the appeal contains an error of law, such that it should be set aside and the following decision substituted: The First-Tier Tribunal had no jurisdiction to hear the appeal, following the notification of the withdrawal of the decision appealed against in accordance with Rule 17(2) of the 2005 Procedure Rules.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Signed

Date

Deputy Upper Tribunal Judge Monson

