



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

Appeal Number: PA/04221/2018

THE IMMIGRATION ACTS

**On the papers at Field House
On 23 November 2018**

**Decision and Reasons
Promulgated
On 29 November 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**FAA
(anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. On 1 May 2018 First-Tier Tribunal Judge James, sitting at Birmingham, heard the appellant's appeal against the respondent's refusal of the appellant's application for asylum. The appellant is a national of Sudan on 1 January 1986.
2. The Judge sets out findings of fact from [19], making a number of positive findings in the appellant's favour. At [25 - 26] the Judge finds as follows:
 25. I am satisfied that there is a real risk that on return to Khartoum the Appellant would be detected as a person of previous interest to the Sudanese authorities and coupled with her return as a failed asylum seeker it would likely result in her further detention and torture or other mistreatment.

26. In conclusion I find that the Appellant cannot be safely returned to Khartoum and for the above reasons I allow this appeal.
3. Notwithstanding these findings, in the section of the decision headed Notice of Decision, the Judge writes 'The Appellant's appeal is dismissed'.
4. The appellants representative wrote the First-Tier Tribunal pointing out the conflict in the decision asking whether the decision could be amended under the slip rule. A Duty Judge found the decision could not be amended under rule 31 of the 2014 Procedure Rules. The Duty Judge reminds the appellant of the time limits for lodging an appeal and invites her to annex a copy of the directions to any letter seeking an application to extend time.
5. Such application was made, and permission granted by Upper Tribunal Judge Martin sitting as a judge the First-Tier Tribunal on 13 July 2018.
6. The matter came before me on the papers as Duty Judge as a result of which a letter was sent to the representatives of the appellant and respondent in the following terms:

"The grant of permission recognises that the First-tier Judge meant to allow the appeal but due to an error dismissed the appeal in the Notice of Decision section. The Judge granting permission is unable to seek to have the same corrected under the "slip rule". The Upper Tribunal proposes to find a legal error on the basis of the procedural error, set the decision aside, and remake the decision, allowing the appeal on the basis of the findings made by the Judge. The parties are invited to write to the Upper Tribunal no later than 4 PM on 14 September 2018, confirming whether they are in agreement with the proposal or, if not, then why not."
7. On 5 September 2018 the appellant's solicitors sent an email to the Upper Tribunal acknowledging receipt of the above direction and confirming agreement with the proposal.
8. On 20 September 2018 a Rule 24 response was received from the Secretary of State stating, "The respondent does not oppose the appellant's application for permission to appeal and invites the Tribunal to determine the appeal with a fresh oral (continuous) hearing to consider whether the appellant is at risk on return to Sudan in light of the FTT's findings of fact." The respondent's position does not properly address the terms of the direction which sought confirmation of whether the parties are in agreement with the proposal to set the decision aside, which does not appear contentious, and for the Upper Tribunal to allow the appeal on the basis of the findings made by the Judge although, if a party does not agree with this proposal to provide reasons why this should be so. The Rule 24 response does not claim that on the basis the findings made the appellant is not able to succeed. The respondents reply is also out of time.
9. It is not made out there is any need to consider whether the appellant is at risk on return in light of the findings made when the clear indication by the Judge is that the appellant would have succeeded but for the error referred to above.

10. I find it appropriate and in the interests of justice and fairness in all the circumstances to find the Judge erred in law in dismissing an appeal when the body of the determination clearly indicates the Judge intended to allow it. On the basis of the findings of fact made by the Judge I substitute a decision to allow the appeal, representing the true intention of the Judge and a finding reasonably open to the Judge and this Tribunal on the evidence and findings made.

Decision

11. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is allowed.**

Anonymity.

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

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated: 23 November 2018