



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

**Appeal Number: PA/05026/2016**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 February 2018**

**Decision & Reasons Promulgated  
On 9 February 2018**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**MD SODRUL ISLAM**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr. M. Bhutyani, Universal Solicitors

For the Respondent: Mr. A. Miah, Home Office Presenting Officer

**DECISION AND REASONS**

**BACKGROUND TO THE APPEAL**

1. The Appellant, who was born on 10 August 1983, is a national of Bangladesh. He first entered the United Kingdom on 13 August 2008 with permission to remain for just 13 days. He did not leave the United Kingdom at the end of this period of time. He applied for permission to remain outside the Immigration Rules on 15 November 2010 but his application was refused.

2. He was encountered on 6 March 2014 and served with notice of liability to removal and detention. A subsequent human rights application was refused and certified on 11 April 2014. It was not possible to remove him from the United Kingdom on 16 September 2015 because he became disruptive and he applied for asylum on 17 September 2015.
3. His application was refused on 4 May 2016 and his appeal was listed before First-tier Tribunal Judge Obhi on 21 February 2017. She promulgated a decision on 2 March 2017 which stated that she had allowed the appeal under the Refugee Convention.
4. On 29 June 2017 the Appellant's solicitors wrote to First-tier Tribunal Judge Obhi pointing out her decision was not in accordance with substance of her findings. She then promulgated a supplemental decision and reasons on 9 August 2017. In this decision, she stated that it was no longer possible for the decision to be amended administratively. She then went on to note that there was a typographical error which erroneously stated that the appeal was allowed when in fact it is clear from the body of the decision that the appeal had been dismissed. She also confirmed that the appeal had been dismissed.
5. On 22 August 2017, the Appellant appealed against the decision, promulgated on 2 March 2017, and also sought an extension of time to do so. First-tier Tribunal Judge Shimmin refused him permission to appeal on 1 November 2017.
6. The Appellant renewed his application for permission to appeal to the Upper Tribunal on 13 November 2017 and Upper Tribunal Judge Grubb granted him permission to appeal on 15 December 2017 on one ground only. This was that, following *Katsonga* ("*Slip Rule*"; *FtT's general powers*) [2016] UKUT 228 (IAC), First-tier Tribunal Judge Obhi had no jurisdiction to issue a supplemental decision correcting her earlier decision. This appears to have been in response to the Appellant's submission that the replacement of the decision promulgated on 2 March 2017 with the one promulgated on 9 August 2017 was ultra vires.

#### **ERROR OF LAW HEARING**

7. Both the Appellant's solicitor and the Home Office Presenting Officer made very brief oral submissions and I have referred to the content of these submissions, where relevant, in my decision below.

## **ERROR OF LAW DECISION**

8. In her decision promulgated on 2 March 2017, First-tier Tribunal Judge Obhi clearly stated at paragraph 46 of her decision that “for the reasons I have given I dismiss the appeal under the refugee convention and under human rights”. However, under the heading, **Decision**, she then wrote “the appeal of the appellant is allowed under the refugee convention”.
9. When this was brought to the Judge’s attention by the Appellant’s solicitor, she promulgated an amended decision, dismissing the Appellant’s appeal, on 9 August 2017. The Appellant then purported to appeal against the decision promulgated on 2 March 2017, as amended by the supplementary decision promulgated on 9 August 2017.
10. First-tier Tribunal Judge Shimmin extended time to appeal against the earlier decision on the basis that the delay arose because of the error previously made by First-tier Tribunal Judge Obhi.
11. But, at 9 August 2017, the relevant slip rule was contained in Rule 31 of the Tribunal (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, which came into force on 20 October 2014 and stated that:

“Clerical mistakes and accidental slips or omissions

31. The Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by— (a) providing notification of the amended decision or direction, or a copy of the amended document, to all parties; and (b) making any necessary amendment to any information published in relation to the decision, direction or document”.
12. It would appear that First-tier Tribunal Judge Obhi believed that she could use this rule to deal with what she referred to as a typographical error. However, in *Katsonga*, which was reported on 18 May 2016, Upper Tribunal Judge Ockleton found that:

“1. The ‘Slip Rule’, rule 31 of the First-tier Tribunal Procedure Rules, cannot be used to reverse the effect of a decision”.
13. Therefore, First-tier Tribunal Judge Obhi had no jurisdiction to “amend” her initial decision and her attempt to amend her earlier decision was ineffective. Therefore, she erred in law when she promulgated her supplementary decision.

14. As a consequence, the only decision which is still in place is that allowing the Appellant's appeal. This decision was appealable by the Respondent on the basis that the decision reached by First-tier Tribunal Judge Obhi was not supported by her findings of fact but no such appeal has been made. Therefore, there is no basis upon which the Upper Tribunal can make a further decision or remit the case to the First-tier Tribunal for a re-hearing.

## **DECISION**

- (1) The Appellant's appeal is allowed on the limited basis that First-tier Tribunal Judge Obhi had no jurisdiction to make her supplemental decision, promulgated on 9 August 2017.

## **DIRECTIONS**

- 1. If the Secretary of State for the Home Department wishes to appeal against the decision, promulgated on 2 March 2017, she must make an application to extend time to do so and submit appropriate grounds.**
- 2. No decision to remove the Appellant from the United Kingdom should be made pending a decision on any such application, any decision to extend time, any further decision on any appeal or any decision not to appeal against the decision, promulgated on 2 March 2017.**

Nadine Finch

Signed  
Upper Tribunal Judge Finch

Date 1 February 2018