



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

Appeal Number: PA/08911/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 4 October 2018**

**Decision & Reasons
Promulgated
On 16 October 2018**

Before

**THE HONOURABLE LADY RAE
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
DEPUTY UPPER TRIBUNAL JUDGE JORDAN**

Between

**GROOVIES [A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Bassiri-Dezfouli, Counsel instructed by A2 Solicitors
For the Respondent: Mr C Avery, Home Office Presenting Officer

REASONS FOR FINDING AN ERROR OF LAW

1. This is an appeal in the case of Mr Groovies [A]. Mr [A] is a citizen of Ghana who had been refused his protection and human rights claim and had appealed against that decision. Unfortunately, in the course of a

decision which was promulgated on 17 July 2018 by the First-tier Tribunal Judge, there were very obvious and numerous errors in the decision in the sense that the judge had clearly incorporated into his decision a series of factors which were unrelated to the present appellant and which clearly related to another person. Consequently, many of the factual recitals in the decision were simply incorrect.

2. Rather than seek to set aside his own decision the judge promulgated a fresh decision on 24 July 2018 which purported to remedy those clear errors in his earlier decision by omitting those parts which were not factually accurate. We are satisfied that that was not a course of action which was open to the First-tier Tribunal Judge. It is clear that the earlier decision had been promulgated on 17 July 2018 and had indeed been made the subject of an appeal by the Secretary of State and consequently there was no provision enabling the judge to issue a fresh corrective decision however much he would have wished to have done so. His judicial function was then complete.
3. The issue before us is what the judge should have done and it is clear that in the Tribunal Procedure Rules 2014 there are a number of provisions which permit mistakes to be rectified in a way which avoids a full hearing. However, they are limited. In paragraph 31 of the Tribunal Procedure Rules 2014, the Tribunal is given the right to rectify clerical mistakes and accidental slips or omissions. It cannot properly be said that this was a simple clerical mistake and, whilst it may have been accidental, it cannot be treated as an accidental slip. Consequently paragraph 31 had no role to play.
4. Rule 32 contains provision for setting aside a decision which disposes of proceedings and the power is to be exercised subject to various conditions, but those conditions were not satisfied in this case. It followed that the only means by which this error could be rectified was by service of a notice of appeal. That was done on 20 July 2018 and paragraph 34 provides that, on receiving an application for permission to appeal, the Tribunal must first consider whether to review the decision in accordance with Rule 35.
5. That is the course of action that should have been adopted by the First-tier Tribunal, and, had such consideration been conducted, it was inevitable that the decision would have been reviewed. Rule 35 provides the Tribunal may only undertake a review of a decision pursuant to Rule 34 on receipt of an application for permission to appeal and if it is satisfied that there was an error of law in the decision. It followed therefore that once a notice of appeal had been served that triggered the necessity of conducting a review and that review would inevitably have led to an error of law being found and consequently the decision being set aside without further ado.
6. As it happened, there has been a considerable amount of to-ing and fro-ing in relation to the notices of appeal, the grants of permission and

whether they refer to one decision or the other decision, but all that is really water under the bridge. The fact is that this case comes before the Upper Tribunal legitimately as a result of a grant of permission, and therefore it is for us to replicate what might and should have been done; replicate in the sense of setting aside the decision as involving an error of law and remitting the case to be remade in the First-tier Tribunal before another judge. Both parties are agreed that that is the appropriate course of action and that is the order that we will make.

7. No anonymity direction is made.

DECISION

- (i) The decision made by the First-tier Tribunal which was promulgated on 17 July 2018 contains errors of law and is set aside.
- (ii) The decision purportedly made by the First-tier Tribunal which was promulgated on 24 July 2018 is invalid through want of jurisdiction and, insofar as is necessary, is set aside.
- (iii) The appellant's appeal is remitted to the First-tier Tribunal for hearing afresh.

ANDREW JORDAN
DEPUTY JUDGE OF THE UPPER TRIBUNAL
10th October 2018