



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

Appeal Number: IA/08834/2007

THE IMMIGRATION ACTS

Heard at Field House

**On 14 January 2014
Prepared 15 January 2014**

**Determination
Promulgated
On 20 January 2014**

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

OMAR ABDULLAH OMAR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Khubber, of Counsel instructed by Messrs Turpin & Miller, Solicitors (Oxford)

For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

**NOTICE UNDER RULE 17 of THE ASYLUM AND IMMIGRATION TRIBUNAL
(PROCEDURE) RULES 2005**

1. Mr Omar Abdullah Omar, born on 27 July 1983, is a citizen of the Netherlands. He entered Britain in 2001 and in December 2005 and March

2006 was sentenced for drug offences and the offence of possession of an imitation firearm with intent to cause fear and violence.

2. On 6 June 2007 a decision to make a deportation order was made against Mr Omar Abdullah Omar by virtue of Section 3(5)(a) of the Immigration Act 1971 as amended.
3. Mr Omar appealed. His appeal was heard by a panel of the Asylum and Immigration Tribunal (Immigration Judge Brenells and Mr D C Walker (non-legal member) on 27 September 2007. Their determination allowing his appeal was promulgated on 10 October 2007. On reconsideration Designated Immigration Judge O.... found that there was no material error of law in the determination of the Tribunal. The Secretary of State then appealed to the Court of Appeal.
4. In a judgment entitled **Cesar Carvalho v SSHD & SSHD v Omar Abdullah Omar [2010] EWCA Civ 1406** the Court of Appeal per Maurice K LJ found, in paragraph 45, that:-

“...the original determination was legally flawed because it was unsupported by adequate reasoning and that the decision on redetermination was vitiated by a material legal error, namely the failure to identify the legal flaw in the original decision...”

5. The Secretary of State’s appeal was therefore allowed.
6. In paragraph 45 the conclusion of Maurice Kay LJ was that:-

“It follows that I would allow the appeal of the Secretary of State, quash the decision on reconsideration and remit the case to the Upper Tribunal.”
7. It is, of course, relevant that by the date of the judgment of the Court of Appeal, the Asylum and Immigration Tribunal had been superseded by the First-tier tribunal (Immigration and Asylum Chambers) and the Upper Tribunal (Immigration and Asylum Chamber).
8. The order made by the Court of Appeal, dated 14 December 2010, ordered that:-

“6) Omar Abdullah Omar’s statutory appeal against deportation be remitted to the lower tribunal for reconsideration *de novo*.”
9. By the time the appeal was listed for mention before me, the appellant, who had been released from prison had committed a further offence and was again in prison. He had also fathered two young children.
10. Mr Deller stated that the Secretary of State considered it appropriate to make a further decision to deport so that all relevant factors could be taken into account at a further appeal were the appellant to decide that he wished to appeal that further decision. This appeal had therefore become

academic. The issue was therefore the disposal of the appeal. He indicated that he wished to withdraw the decision of 6 June 2007 and further to withdraw the case before the Upper Tribunal.

11. Mr Khubber stated that he wished the findings and the conclusions of the Asylum and Immigration Tribunal to stand.
12. There is clearly conflict between the judgment of Lord Justice Maurice Kay stating that the appeal should be remitted to the Upper Tribunal and the order made remitting the appeal to the "lower Tribunal". It is my view that the order made takes precedence over what was stated in the judgment.
13. The order having remitted the appeal to the lower Tribunal, the provisions of Rule 17 of the Asylum and Immigration Tribunal (Procedure) Rules 2005 apply as Rule 17(2) states that an appeal should be treated as withdrawn if a respondent notifies the Tribunal that the decision to which the appeal relates has been withdrawn.
14. Sitting as a Judge of the First-tier Tribunal, I note therefore that the decision has been withdrawn and therefore the appeal should be treated as withdrawn.
15. However, if I am wrong and the appeal is now in the Upper Tribunal, I note that the Secretary of State has given notice of the withdrawal of her case and, sitting as a Judge of the Upper Tribunal, I consent to the withdrawal of the Secretary of State's case.
16. The result of this decision is that there are now no longer any proceedings before either the First-tier or the Upper Tribunal. The determination of the Immigration and Asylum Tribunal therefore stands and, it will be for the First-tier Tribunal to place what weight they consider appropriate on that decision taking into account what Maurice Kay LJ wrote in paragraph 45 of his judgment.

Signed

Date

Upper Tribunal Judge McGeachy