



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

Appeal Number: IA/10698/2014

THE IMMIGRATION ACTS

Heard at Field House, London

Decision and Reasons

On 25 November 2015

Promulgated

Decision given orally on 27 November
2015

On 10 December 2015

Before

**The President, The Hon. Mr Justice McCloskey and
Upper Tribunal Judge N Finch**

Between

BIDIT NEUPANE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

Appellant: Mr Z Malik, Malik Law Chambers (Solicitors)

Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal raises a rather interesting issue. Ultimately its resolution is found in the judgment of the Court of Appeal in the case of R (Patel) v SSHD [2015] EWCA Civ 1175.

2. We are required to consider all of the available evidence in order to make a proper assessment of what occurred at the conclusion of the hearing before the First-tier Tribunal (the "*FtT*"). That evidence has two sources. One is the contemporary record found in the report made by counsel for the Appellant to his instructing solicitors. This is recited *verbatim* in [2] of the grounds of appeal. The second source of evidence is the record of proceedings. Each of these two items of evidence requires a degree of evaluation and interpretation. Having subjected both to careful, but fair and reasonable, analysis we conclude without hesitation that what the judge did at the conclusion of the hearing was to pronounce in terms his decision that the appeal was being allowed. While there is no record of his precise language that is the conclusion we make unhesitatingly having considered the only available evidence on this issue and drawing on the panel's experience of practices and events of this kind.

3. Mr Wilding has argued, with some ingenuity, that judge merely gave an "indication". We are quite satisfied that there are no shades, nuances or levels involved in a judicial act of this nature. A decision is a decision. One might in principle be able to apply different labels and appellations: such as determination, conclusion, result or outcome – all synonyms in this context. But from as long ago as this bench can remember it has been the practice in a whole series of courts and tribunals for judges at all tiers of the legal system in the United Kingdom, in appropriate circumstances, having heard all the evidence and the arguments, to state in terms what their decision is without elaborations or reasons. The most frequently employed formula of which one readily takes judicial notice is that of the judge who says '*I am allowing [the action, the application, the claim, the appeal] (or I am refusing it) for reasons which will follow in due course in my written judgment*'. That is an experience which all litigating practitioners have had on countless occasions in practice spanning many decades. That was in substance what the judge did on this occasion. We are absolutely clear about this.

4. Having regard to the terms of rule 40 of the Upper Tribunal Rules, juxtaposed with the decision of the Court of Appeal in Patel, we conclude that the error of law canvassed on behalf of the Appellant is established.

5. The nature of this error of law raises the important considerations of fairness and appearances. Having regard to those considerations we further conclude, again, without hesitation and consistent with the Practice Directions of the Upper Tribunal, that the appropriate course is to set aside the decision of the FtT and remit the appeal to a differently constituted FtT for a rehearing and fresh decision. We do not consider that we need to exercise our statutory power to make any associated or ancillary directions. This is a routine appeal. It is ready to proceed upon remittal.

Seamus McCloskey

THE HON. MR JUSTICE MCCLOSKEY

PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Dated: 27 November 2015