



IAC-AH-CO-V1

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

Appeal Numbers: HU/23351/2016
PA/03449/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 11 July 2018**

**Decision & Reasons Promulgated
On 23 August 2018**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

K A A

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Esen Tufan, a Senior Home Office Presenting Officer
For the Respondent: Ms Frances Allen, instructed by Paul John & Co Solicitors

DECISION AND REASONS

Anonymity

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the

original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal, allowing the claimant's appeals numbered HU/23551/2016 (a human rights appeal against the Secretary of State's decision on 28 September 2016) and PA/03449/2018 (an appeal against the Secretary of State's decision on 8 January 2018, served on the claimant on 1 March 2018, to refuse him international protection). The claimant is a Ghanaian citizen.
2. In her decision of 28 September 2016, the Secretary of State decided that the claimant's further submissions on human rights did not amount to a fresh claim pursuant to paragraph 353 of the Immigration Rules HC 395 (as amended). There was therefore no appealable decision. The proper route of challenge to the 28 September 2016 was judicial review, not an appeal. Jurisdiction to hear and determine an appeal cannot be created by an erroneous decision of a First-tier Tribunal Judge.
3. Unfortunately, a Duty Judge held that the claimant's challenge before the First-tier Tribunal to the September 2016 decision was a valid appeal, and the Secretary of State did not challenge that decision. The First-tier Judge considered, having regard to the overriding objective, that it was appropriate to proceed on the basis that the September 2016 human rights appeal was valid, and that the protection appeal was listed before him (in fact, only the human rights appeal had been listed, but the protection appeal file accompanied it and the Judge was able to consider both files at the hearing).
4. In his decision, the First-tier Tribunal Judge recorded that the claimant's Counsel indicated at the hearing that the international protection element of PA/03449/2018 appeal was not relied upon and that the claimant relied only on his human rights appeal. There is no reasoning on the international protection element in the First-tier Tribunal decision. The Judge proceeded to allow the appeal 'outright' without specifying which of the appeals before him had succeeded.
5. The First-tier Tribunal Judge fell into an error of law. Jurisdiction cannot be created by an erroneous decision by a Duty Judge, whether or not challenged by the Secretary of State.
6. It follows that I must set aside the decision of the First-tier Tribunal in both appeals, for the following reasons:
 - (a) In relation to HU/23351/2016, neither the Upper Tribunal nor the First-tier Tribunal has jurisdiction to hear an appeal against this decision; and
 - (b) As regards the protection appeal PA/03449/2018, the First-tier Tribunal Judge erred in making no findings or separate decision about the asylum and international protection application. The decision in that appeal (including any human rights issues which arise thereunder) will be remade in the First-tier Tribunal, with no findings of fact or credibility preserved.

DECISION

7. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law. I set aside the previous decision.

I remake the decisions in these appeals by allowing the Secretary of State's appeal against the decision of the First-tier Tribunal in HU/23351/2016 (on which there is no appellate jurisdiction) and by setting aside the decision of the First-tier Tribunal in appeal number PA/03449/2018.

The decision in PA/03449/2018 will be remade in the First-tier Tribunal on a date to be fixed.

Signed: *Judith A J C Gleeson*
Upper Tribunal Judge Gleeson

Date: 15 August 2018