



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

**No: UI-
2022-004749
First-tier Tribunal No:
PA/55434/2021 IA/16432/2021**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 18 May 2023**

Before

**UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE PARKES**

Between

MS

(Anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr W Khan (Legal Representative, Fountains Solicitors)

For the Respondent: Mr P Lawson (Home Office Presenting Officer)

Heard at Birmingham on 4th May 2023.

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

**NOTICE OF DECISION PURSUANT TO RULE 17A OF THE TRIBUNAL
PROCEDURE (UPPER TRIBUNAL) RULES 2008**

1. The Appellant's asylum application of the was refused by the Respondent for the reasons given in the Refusal Letter of the 3 November 2021. The Appellant's appeal against the refusal was heard by First-tier Tribunal Judge

O'Brien on the 5th of July 2022. For the reasons given in the decision promulgated on the 18th July 2022 the asylum appeal was dismissed but his appeal allowed on article 8 grounds.

2. Permission to appeal the protection claim to the Upper Tribunal was granted by First-tier Tribunal Judge Aldridge on the 27th September 2022. The Respondent's rule 24 response was provided in a letter of the 6th October 2022. The Appellant was granted Limited Leave to Remain, in line with the decision to allow his appeal under article 8, on the 1st November 2022.
3. Rule 17A of The Tribunal Procedure (Upper Tribunal) Rules 2008 ('the Procedure Rules') provides that in a case before the Upper Tribunal where a party has been granted leave to remain in the UK, but the Appellant wishes to pursue the appeal in the Upper Tribunal, the Appellant "must" send a Notice to the Upper Tribunal within 30 days of the grant of leave to remain. No such notice has been sent in this appeal.
4. At the hearing Mr Lawson drew our attention to the Upper Tribunal decision in MSU (S.104(4b)) notices) Bangladesh [2019] UKUT 412 (IAC) and the absence of compliance with rule 17A of the Procedure Rules. Mr Khan had been unaware that this point was being taken and the case was put back for him to consider the point and take instructions. We note that this point could not have been taken in the Respondent's rule 24 response as that pre-dated the grant of leave to remain to the Appellant. It is also the case that there was no notice to the Tribunal of the grant of leave in accordance with rule 17A(1)(b).
5. On resuming the hearing Mr Khan had been unable to take instructions and so was unable to assist with why no notice had been served. He applied for an extension of time for the service of the notice, in line with the discretion identified in MSU. We were not persuaded that it was appropriate to grant permission and declined to exercise our discretion to do so, on the facts.
6. In MSU the required notice had been served 15 days late and there was an explanation for the delay. At paragraph 44 of the decision the decision to extend time was granted "by quite a narrow margin". In the current appeal, the Appellant's grant of leave was made on the 1st November 2022, more than 6 months - 12 times the delay in MSU, and at the hearing before us with no explanation for the failure to serve the required notice.
7. In the circumstances there was no justification for the exercise of discretion to extend time to facilitate the service of the required notice under rule 17A. The Appellant has limited leave to remain in the UK and is not prejudiced in that way.

Notice of Decision

8. The appeal to the Upper Tribunal has been abandoned.

Judge Parkes

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 9th May 2023

Appendix - The Law

Section 104 Nationality, Immigration and Asylum Act 2002

104 Pending appeal

- (1) An appeal under section 82(1) is pending during the period—
- (a) beginning when it is instituted, and
 - (b) ending when it is finally determined, withdrawn or abandoned (or when it lapses under section 99).
- (2) An appeal under section 82(1) is not finally determined for the purpose of subsection (1)(b) while—
- (a) an application for permission to appeal under section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007 could be made or is awaiting determination,
 - (b) permission to appeal under either of those sections has been granted and the appeal is awaiting determination, or
 - (c) an appeal has been remitted under section 12 or 14 of that Act and is awaiting determination.
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- (4A) An appeal under section 82(1) brought by a person while he is in the United Kingdom shall be treated as abandoned if the appellant is granted leave to enter or remain in the United Kingdom (subject to subsection (4B)).
- (4B) Subsection (4A) shall not apply to an appeal in so far as it is brought on a ground specified in section 84(1)(a) or (b) or 84(3) (asylum or humanitarian protection) where the appellant—
- (a)
 - (b) gives notice, in accordance with Tribunal Procedure Rules, that he wishes to pursue the appeal in so far as it is brought on that ground.

Rule 17A: Appeal treated as abandoned or finally determined in an asylum case or an immigration case.

- 17A.**—(1) A party to an asylum case or an immigration case before the Upper Tribunal must notify the Tribunal if they are aware that—
- (a) the appellant has left the United Kingdom;
 - (b) the appellant has been granted leave to enter or remain in the United Kingdom; or
 - (c) a deportation order has been made against the appellant;

- (1A) A party to an appeal under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 ("the 2020 Regulations") before the Upper Tribunal must also notify the Upper Tribunal if they are aware that the appeal is to be treated as abandoned under regulation 13 of those Regulations.
- (2) Where an appeal is treated as abandoned pursuant to section 92(8), 104(4) or (4A) of the Nationality, Immigration and Asylum Act 2002 or regulation 13(3) of the 2020 Regulations, or as finally determined pursuant to section 104(5) of the Nationality, Immigration and Asylum Act 2002, the Upper Tribunal must send the parties a notice informing them that the appeal is being treated as abandoned or finally determined.
- (3) Where an appeal would otherwise fall to be treated as abandoned pursuant to section 104(4A) of the Nationality, Immigration and Asylum Act 2002 or regulation 13(3) of the 2020 Regulations, but the appellant wishes to pursue their appeal, the appellant must send or deliver a notice, which must comply with any relevant practice directions, to the Upper Tribunal and the respondent so that it is received within thirty days of the date on which the notice of the grant of leave to enter or remain in the United Kingdom was sent to the appellant.
- (4) Where a notice of grant of leave to enter or remain is sent electronically or delivered personally, the time limit in paragraph (3) is twenty eight days.
- (5) Notwithstanding rule 5(3)(a) (case management powers) and rule 7(2) (failure to comply with rules etc.), the Upper Tribunal must not extend the time limits in paragraph (3) and (4).

THE IMMIGRATION ACTS

Heard at Field House

**Decisions & Reasons sent
out on**

On 23 October 2019

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Before

**THE HONOURABLE MR JUSTICE LANE, PRESIDENT
MR C. M. G. OCKELTON, VICE PRESIDENT**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MSU

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr S Kotas, Senior Home Office Presenting Officer.

For the Respondent: Mr A Bandegani, instructed by Duncan Lewis.

- 1. Where s.104(4A) applies to an appeal, neither the First-tier Tribunal nor the Upper Tribunal has any jurisdiction unless and until a notice is given in accordance with s.104(4B).*
- 2. If such a notice is given, it has the effect of retrospectively causing the appeal to have been pending throughout, and validating any act by either Tribunal that was done without jurisdiction for the reason in (1) above.*
- 3. As the matter stands at present, there are no 'relevant practice directions' governing the s.104(4B) notice in either Tribunal.*
- 4. The Upper Tribunal has power to extend time for a s.104(4B) notice. Despite the provisions of Upper Tribunal rule 17A(4), such a power can be derived from s.25 of the Tribunals, Courts and Enforcement Act 2007.*