



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

**Case No: UI-2024-000899**  
**First-tier Tribunal Nos:**  
**PA/50371/2023**  
**LP/03145/2023**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 25 July 2024**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**  
**UPPER TRIBUNAL JUDGE KEITH**

**Between**

**“RD” (CAMEROON)**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr K Mukherjee instructed by Rodman Pearce Solicitors  
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

**Heard at Field House on 3<sup>rd</sup> June 2024**

**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. The reason is that the appeal relates to a protection claim.**

**DECISION AND REASONS**

## **Background**

1. The appellant appeals against the decision of First-tier Tribunal Judge Parkes who, in a decision promulgated on 18<sup>th</sup> January 2024, dismissed the appellant's protection and human rights appeals. The appellant has claimed to fear persecution in her country of origin, Cameroon, because her son, now resident in the UK and a recognised refugee, is a gay man and because she is perceived to be a lesbian.
2. We turn first to the respondent's decision; followed by the appellant's skeleton argument and the respondent's review before the First-tier Tribunal; and the Judge's judgment. Where we refer to documents in the combined bundle, we will refer to them as page [X]/CB.

## **The respondent's decision**

3. The respondent's record of the appellant's immigration history dated 6<sup>th</sup> January 2023, began at page [92]/CB. It included the following:
  - "1. Application for a visit visa to the UK was made on 02 June 2021, ... and this visa was refused on 09 June 2021.
  2. Application for a visit visa for the UK was made on 20 December 2021 ... and this visa was granted on 20 January 2022. VAF number 1987811 (Home Office records)."

The same immigration history then contained a document section, which included the following documents, attached in order:

"Annex A - Decision letter dated 06 January 2023 [with a hyperlink],

Annex B - Visa Application form 1 - VAF Number 1873817 applied on 02/06/2021, refused on 09/06/2021 [with a hyperlink], and

Annex C - Visa Application form 2 - VAF Number 1987811 applied on 20/12/2021, valid from 20/01/2022 to 20/07/2022 [with a hyperlink]."

4. The respondent rejected the appellant's protection claim in a decision of 6<sup>th</sup> January 2023, beginning at page [95]/CB. However, in its reasons for doing so, it accepted that the appellant feared persecution because of her son's sexuality as a gay man. Specifically, the respondent also accepted that:

"You received adverse attention from the community in Cameroon after they discovered your son's [name redacted] sexuality as a gay man".

5. The respondent also accepted that there was a reasonable degree of likelihood that the appellant's fear of persecution was well-founded, because of her fear of being killed by members of the community who were non-state actors, as she had previously received verbal abuse by neighbours and others after they discovered her son's sexuality. However, the respondent did not accept that there was a reasonable degree of likelihood that the appellant would be persecuted. While the respondent accepted that the appellant would not have adequate access to protection from the Cameroonian state, she could travel to, and remain in an alternative location in Cameroon, away from her home town,

because those non-state actors whom she feared did not have any influence over others and would not find her.

### **The appellant's skeleton argument before the First-tier Tribunal**

6. As a result of the respondent's concessions, the appellant's representative had concentrated in her appeal skeleton argument or 'ASA' before the FtT (at page [14]/CB), on the appellant's ability to relocate internally within Cameroon. The appellant disputed that this would mitigate the risk to her of persecution. She referred to having been detained in one police station and when she went to a police station in a different city to which she had fled, the police officer discovered that she should have reported to the first police station, and officer allegedly abused her. She feared that she would be detained by police; and would face abuse and ill-treatment on return to the city to which she had fled, or any other location in Cameroon.

### **The Respondent's Review**

7. We refer to the standard process in the First-tier Tribunal, Parts 6 and 7 of the Practice Statement of the President of the First-tier Tribunal Immigration and Asylum Chamber, No 1 of 2022, in particular Part 6, paragraphs A6 and A8, which deal with the ASA and the respondent's response, under which the respondent is required to carry out a review. Para A8 states:

*"A8 Respondent's Response.* Within fourteen days of the ASA being provided the respondent must undertake a meaningful review of the appellant's case, taking into account the ASA and the appellant's bundle, providing the result of that review and particularising the grounds of refusal relied upon".

8. In the respondent's review, which we have redacted, the respondent stated at §7:

“7. The concession in the RFRL [the refusal letter] that the Appellant's account of events in her home area in [location redacted] and her subsequent departure to [location redacted] in December 2019 or 2020 is withdrawn as new evidence, from previous visa applications has come to light, which undermines the credibility of the Appellant's claims and whether she is a witness of truth. The Respondent will seek to test the credibility of the Appellant and her witnesses at the hearing.

8. The Appellant has variously claimed that she worked as a Headmistress in [location redacted] until December 2019 or 2020 because she was at risk on account of being accused of being a Lesbian or witch, had to flee her home and thereafter resided with her son in [location redacted] until she came to the UK on a visit visa in February 2022.

9. This account is materially contradicted by her 2 visit visa applications in May and November 2021. In both applications she claimed she was still residing with her husband in [location redacted] ... whereas in her interview she claims she was living alone. She also confirmed that she was still employed as a Headmistress in [location redacted] ... This fundamentally contradicts her claims that she fled [location redacted]

in December 2019 or 2020, stopped working and had been residing in hiding with her son in [location redacted] ever since.

10. These declarations were also supported by evidence, submitted with the April 2021 application ...
  11. The Appellant also confirmed in her screening interview that on arrival she intended to return to Cameroon ...
  12. In her screening interview she also claimed she was being called a witch ... and did not claim that she was accused of being a lesbian. The Appellant also denied being detained or ever accused of a crime, which is inconsistent with her later claims of being detained in a police station and being accused of being a homosexual which is a potential criminal offence.
  13. The Appellant also inconsistently claimed in her PIQ that she was kidnapped in November 2021, beaten and left near to death.
  14. Nor is it considered credible that if she had been accused of being a lesbian and/or witch from 2012-2020 and that colleagues were shunning her, and children were being withdrawn from school that she would not only have been allowed to remain as a teacher but to have been promoted to headmistress.
  15. The Appellant has also introduced new matters in her appeal statement. She now claims that after she was detained in [location redacted] police station she was required to report monthly yet did not mention this in her screening interview.
  16. The Appellant now claims that she went to the police in [location redacted] to tell them that she had left her school ... firstly it is not credible that she would report such a matter to the police ... Secondly, this is inconsistent with her claim at interview that she went to the police in [second location redacted] to make a complaint ...".
9. The Judge considered the respondent's unilateral withdrawal of its concession in his judgment:

- "9. The application was refused for the reasons given in the Refusal Letter. In the Refusal Letter it was accepted that the events the Appellant related in Cameroon had taken place, that concession was retracted in the Respondent's review which noted a number of inconsistencies. It was not accepted that the Appellant would be at risk in Cameroon having family support and being able to live in [location redacted] without incident from either December 2019 or 2020 until she left at the start of 2023.
11. At the start of the hearing Mr Mukherje [sic] objected to the Respondent's withdrawal of the acceptance of the Appellant's account of events in Cameroon, relying upon the unreported case of E.A.Z v SSHD UI-2022-005497. That case contains a review of the past case law and it is clear that a concession may be withdrawn but and Appellant must be given an opportunity to address any points that

arise. In this appeal the concession was withdrawn, with additional reasons for rejecting the Appellant's credibility, by the Review of 22<sup>nd</sup> of September 2023. The points raised were made clearly and the Appellant had had sufficient opportunity to obtain further evidence and address the concerns.

12. A point made by Mr Mukherjee, which I accept, is that the Appellant's obtaining a visa to come to the UK, if it was with the intention of claiming asylum, should not itself be held against her. Revealing that intent would lead to an application for a visa to be rejected. In my view the information given in an application for the visa and whether that was the Appellant's intention may be relevant to the assessment of credibility. If the Appellant did intend to claim asylum that should not be held against her".
10. We canvassed with the representatives (as we were not entirely clear) whether the Judge expressly permitted the respondent to withdraw its concession. If he did, it must have been impliedly, as there was no express statement to this effect. The Judge then went on to consider, in detail, the credibility of the appellant's account of adverse treatment in Cameroon. The Judge rejected the appellant's account as being inconsistent and found that she had not shown that she would be of interest to the police or to others in Cameroon, whether on the account of being perceived to be a lesbian or because of her son's sexuality. The Judge did not then go on to consider the sufficiency of protection available to the appellant or whether she could internally relocate.

### **The Appellant's Appeal**

11. The appellant initially sought permission to appeal from the First-tier Tribunal, which was refused, but on renewal, Judge Norton-Taylor granted permission on all grounds on 4<sup>th</sup> April 2024.
12. The appellant appealed on the following grounds. First, the Judge erred in allowing the respondent to withdraw its concession where there was substantively no new evidence relied upon in the respondent's review, as the respondent had been aware of the circumstances of the appellant's application for entry clearance at the time of the appellant's substantive asylum interview and at the time of the initial refusal letter. The respondent could not simply resile from the concession or take a different view of the same evidence, because of a change of mind about the appellant's credibility. The initial decision maker was arguably in a better position to assess credibility, having interviewed the appellant.
13. Second, as per the unreported authority of EAZ v SSHD UI-2022-005497, the Judge had failed to consider why the respondent wished to withdraw its concession. It was not sufficient that just because the appellant would be able to address challenges to her credibility, that the Judge did not need to ask about the respondent's reasons. Instead, the Judge ought to have asked why the concession was made; why it was now said to be mistaken; and why it was just and fair that the respondent be allowed to withdraw it, it as per the authority of AM (Iran) v SSHD [2018] EWCA Civ 2706, at §44.
14. Third, and in the alternative, whilst the Judge had referred to a delay by the appellant in claiming asylum, the Judge arguably erred in treating that as a

sufficient reason for undermining the appellant's credibility. After all, the Judge had accepted that the appellant's provision of false information in her visit visa application could be explained as she would never have been able to flee Cameroon and enter the UK.

### **The Hearing Before Us**

15. The respondent has not provided a Rule 24 response. We only had sight of the respondent's skeleton argument a matter of minutes before the hearing started, because the respondent had only sought to upload the skeleton argument on to CE-File after office hours the previous Friday evening. We indicated to Counsel that this was not an appropriate way for the respondent to conduct the litigation.
16. We were conscious that the respondent does not need to serve a Rule 24 response in all cases. However, the respondent needs to do so in order to advance grounds on which it was unsuccessful before the Judge, following the Court of Appeal's guidance in SSHD v Devani [2020] EWCA Civ 612. This is because of the effect of what it termed the "additional grounds provision" in Rule 24(3)(e) of the Upper Tribunal Rules 2008. We mention this as Mr Parvar sought to argue that the respondent had applied to withdraw its concession (as opposed to purporting unilaterally to withdraw it). This appeared, at best, to be a new issue which the Judge had never considered, or one on which the respondent had not succeeded. In either case, Rule 24(3) applied. In the first scenario, this was because the respondent was seeking to uphold the Judge's decision for reasons other than those given by the Judge (Rule 24(3)(e)(i)). In the second scenario, Rule 24(3)(e)(ii) applied to grounds on which the Respondent was unsuccessful. In the absence of a Rule 24 response or an application to file a response out of time, we did not allow Mr Parvar to advance arguments that the respondent had applied to the First-tier Tribunal to withdraw its concession.
17. A second preliminary point arose of whether the appellant's representative's skeleton argument went beyond the permitted grounds of appeal, and whether the appellant was advancing arguments never made to the Judge. The appellant argued that the purpose of a review in the First-tier Tribunal was to clarify existing pleadings, not to withdraw a wrongly made concession or, if it were argued that there was no evidence, to adduce new evidence in the absence of a proper application. First, we conclude that the arguments were within the permitted grounds of appeal which had been permitted to proceed, specifically §3.1. Second, as to what was argued before the Judge, Mr Parvar accepted that he had not made any application to adduce any note of what had been argued before the Judge; had not attempted to agree the position with the appellant, as to what had been argued; had not appeared below; and had not applied to listen to any recording of that hearing. The appellant's opposition to withdrawal of the concession was clearly recorded, in general terms, at §11 of the judgment. In these circumstances, we did not permit Mr Parvar to submit what specific oral arguments had, or had not been advanced before the Judge, which risked speculation, in the absence of a fully agreed note. We add that it does not assist this Tribunal if parties at appeal hearing, seek to argue, for the first time, that submissions within grounds of appeal were or were not made to a Judge, and they have made no attempt to agree this with the other side; to seek to adduce relevant evidence; nor to listen to a recording, if it exists (Elais (fairness and extended family members) [2022] UKUT 00300 applied).

### **The Appellant's Submissions**

18. We summarise the gist of the appellant's arguments and the skeleton argument on which Mr Mukherjee relied. His principal submission was that the respondent had changed her mind on the appellant's credibility, between the refusal decision and the respondent's review, with no new evidence, apart from in one narrow area. It was reasonable to assume that the original decision maker on the asylum claim had considered the appellant's previous visa applications. This Tribunal did not need to rely on an assumption, as the respondent had expressly referred to the visa applications in Annexes A and B of the refusal decision. In addition, it was far from clear that (1) the respondent had applied to withdraw its concession, as opposed to purportedly withdrawing it unilaterally in the review; and (2) that the Judge had ever reached a firm decision on whether to allow the respondent to withdraw its concession.
19. Returning to the main issue of what had changed the respondent's mind, the only points on which the appellant had adduced new evidence were in relation to the appellant's fear of persecution in her home town and the viability of internal relocation. Neither went to the heart of the respondent's primary concession that the appellant had suffered adverse interest in Cameroon, in several locations. The respondent's review was not an appropriate forum in which to withdraw a concession because of a change of mind. There may be circumstances in which it was appropriate for the respondent to be allowed to withdraw its concession at a late stage, for example when an appellant's oral witness evidence fundamentally undermined their case. A respondent may seek to concede a point in its review which it had earlier argued in a refusal letter, but the review was not the opportunity for a 'second bite of the cherry.' The case of SSHD v Davoodipanah [2004] EWCA Civ 106, at §22, was authority for the proposition that a Tribunal could allow a concession to be withdrawn if it considered that there was a good reason, in all the circumstances. In deciding whether to allow the withdrawal of a concession, one relevant factor would be the prejudice to the other party if it were permitted. Other relevant factors could include the nature of concession and the timing of any application to withdraw, although it was not essential to demonstrate prejudice before an application to withdraw a concession could be refused. What a Tribunal must do is to try to obtain a fair result and make proper enquiries to ensure that that result was achieved. It was not the purpose of a review to take a wholly different view on essentially the same evidence from an original decision under appeal, particularly where, as here, there was no application to withdraw the concession. The Judge had erred in his analysis of whether it was appropriate to permit a withdrawal, to the extent that he reached a decision.
20. As the Court of Appeal recorded in AM (Iran) v SSHD [2018] EWCA Civ 2706, withdrawals in a belated or informal way were not to be encouraged, (see §44):

“One would expect those who seek to withdraw a concession to explain both promptly and frankly why the concession was made, why it was withdrawn, and why it was now just and fair that they be allowed to withdraw it.”
21. The procedure had not been carried out in this case because the review relied on evidence that had previously been before the decision maker. The Judge did not ask why, if there were new evidence, it was relied on belatedly. The Judge had not asked whether the “new” evidence had been considered in the initial decision. The Judge did not ask why the respondent now took a different view of the appellant's credibility on the same issue. The respondent had not explained why its initial view of accepting the appellant's credibility was inaccurate.

22. Finally, in the alternative, the Judge erred in relying on the appellant not being honest in her visa application about why she wanted to enter the UK (said to be the “new” evidence) when that was entirely explicable as she would not otherwise have been allowed to enter the UK.

### **The Respondent’s Submissions**

23. We also summarise the gist of the respondent’s skeleton argument, which we read after the hearing in light of its late production. The respondent argued that NR (Jamaica) v SSHD [2009] EWCA Civ 856 (§12) made clear that a Judge had a wide discretion to accept the withdrawal of a concession at any stage. It was permissible for the respondent to come to a different view on credibility in a review, just as the respondent could concede new points in its review. There was no authority to for the proposition that the respondent could not, in its review, withdraw a concession made in a refusal decision. The Practice Statement, No 1 of 2022 allowed the respondent to particularise any additional grounds of refusal, as part of its review. The review was the ideal place in which to do so. Contrary to the grounds, the visa application forms were not in fact previously available to the decision maker, prior to the review. The references to the appendices were to brief visa application details on the UK Border Agency computer system and not to the details of the visa applications.
24. Next, the respondent argued that the appellant had not taken any issue with the respondent’s review, which was produced after the appellant served a bundle of further evidence. The appellant had not argued before the Judge that the respondent could not change its mind in its review or that the evidence was not new.
25. Moreover, the review did not rely solely on the visa application forms in withdrawing the respondent’s concession. The respondent also identified other inconsistencies which could only have been identified after review of the appellant’s appeal bundle. These were not relatively minor or peripheral inconsistencies and included a new claim that the appellant had been detained at a police station, which she had never mentioned before. The Judge had adequately explained his decision, stating at §11 that the new points were raised clearly and the appellant had had sufficient opportunity to obtain further evidence. It was difficult to see how the withdrawal of the concession would not achieve a fair and just result. This case was very different from Davoodipannah, in which the respondent had conceded that if the appellant’s account were credible, her claim would succeed. The whole of that case turned on credibility. Here, the respondent had only ever conceded, at pre-appeal stage, part of the appellant’s case. The respondent had not attempted to adduce new arguments in the midst of a Tribunal hearing, as had occurred in Davoodipannah.
26. In summary, the reason for the respondent’s change of mind was that it was able to review the full evidence of the visa application forms. It had not belatedly disclosed evidence, and the appellant was now opportunistically appealing on the basis of arguments not pursued before the Judge. The Judge’s reasons, while brief on the concession point, were adequate and explained why the lack of prejudice to the appellant weighed in favour of the withdrawal of the concession.

### **Discussion and Conclusions**



27. We considered the authorities of Davoodipannah, NR (Jamaica), AK (Sierra Leone) v SSHD [2016] EWCA Civ 999 and AM (Iran). We draw from them the principles set out below. We add the caution that they are no substitute for the principles in the Overriding Objective, just as there are no all-embracing principles which apply beyond CPR 1.1 (see §40 of AM (Iran)).
28. The Overriding Objective requires careful consideration of whether there are concessions on a matter of fact; or on a matter of law; or on a mixture of the two. Concessions may have been made in writing a formal document, such as a decision letter, or in a pleading such as grounds of defence. They may have been made orally, and may relate to minor or major matters, which is the context of the Court of Appeal's caution about "all-embracing principles". Nevertheless, concessions provide guardrails for the parties' conduct of litigation, and have real benefits in narrowing down the issues between the parties. They may be made, perfectly permissibly, for tactical reasons in litigation, in order to minimise delay and to focus on issues important to the parties.
29. The 'guardrails' provided by concessions rest on clarity. First, there needs to be clarity on whether concessions are truly made, in the sense of being clear, unequivocal and unambiguous. There is all the difference in the world between a concession and a failure to challenge (see NR (Jamaica) at §10). The former will bind the Tribunal; the latter will not. This is particularly important where the party appearing to make a concession is not legally represented. Second, there needs to be clarity on the scope of the concession, so that it can be safely relied on by the opposing party and the Tribunal.
30. Third, there needs to be clarity about when a concession is proposed to be withdrawn and any decision on that application. The withdrawal of a concession may change the framework in which the litigating parties have operated, so that it is not appropriate for a party to purport, unilaterally, to withdraw a concession. Rather, the party seeking to withdraw a concession should apply for permission to do so from the Tribunal, giving reasons. The formality of that application will depend on the context (including whether at a hearing and whether or not opposed), but is not a unilateral action. The Tribunal should, in turn, provide a clear decision, with sufficient reasons so that the parties know "why?"
31. The Tribunal can expect to see those who apply to withdraw a concession, to explain promptly and frankly why the concession was made; why it was mistaken; and why it is now just and fair that they be allowed to withdraw it (see §44 of AM (Iran)). However, the Tribunal should not apply a test of needing to be satisfied that the decision to withdraw was rationally made on 'public law' terms. There is no requirement to analyse the nature of the concession and the justification for its withdrawal as though it were an administrative decision of a public body. There is no test that only if something new has arisen after the concession has been made that it may be permitted to be withdrawn. There is also no requirement that whenever a party seeks to apply without notice to withdraw a concession, it is obliged to seek an adjournment. All of these propositions were expressly rejected in NR (Jamaica) (§§13 to 14).
32. Rather, as §22 of Davoodipannah confirms, a concession can be withdrawn if a Tribunal believes that there is good reason in the circumstances to take that course. Whether it is appropriate to do so will include the prejudice to one of the parties if the withdrawal is allowed; the nature of the concession and the timing; but it is not essential to demonstrate prejudice before an application can be

refused. Instead, what a Tribunal must try to do is to obtain a fair and just result. In the absence of prejudice, if a party has made a concession that appears in retrospect to be a concession which it should not have made, then probably justice will require it to be allowed to withdraw the concession, but everything depends on the circumstances.

33. A concession could be withdrawn even at a hearing, but before its conclusion, provided that the opposed party has the opportunity to deal with a new case before them (§10 of NR (Jamaica)). The party seeking to withdraw a concession should do so as soon as possible, and it will be up to the Judge to decide if an application for an adjournment to enable the case to be met is made and whether to grant it.
34. In a more extreme example, in the case of AK (Sierra Leone), the Court of Appeal was particularly concerned where the Secretary of State had conceded an appeal in its entirety and had then sought to withdraw its concession. The Court did not go so far as to say that the Secretary of State could never do so, but it would seem unjust that the Secretary of State, having conceded all points, should be entitled to resurrect her case (§49).

### **Applying the law on concessions to this case**

35. We begin by stepping back and considering the context of the purportedly withdrawn concession. Protection claims may, in many cases, contain three broad elements within them: the claim of adverse interest based on previous adverse attention either in the country of origin or because of sur place activities, and future risk in both cases; the availability and sufficiency of state protection in the country of origin; and the ability to relocate internally provided that is not unduly harsh and the effects would mitigate the claimed risk. The respondent's concessions were significant, as in the refusal decision, it had accepted two of the three sets of facts: the claim of previous adverse interest and that there would not be sufficiency of protection. The only contested issue had been the appellant's ability to relocate internally. The respondent had not conceded all points, as in AK (Sierra Leone). Nevertheless, the concessions covered two significant elements of the protection claim.
36. Having cautioned ourselves that we should not apply a rationality review, we are nevertheless satisfied the Judge erred in law on procedural grounds in this case. We do not say that he was wrong for permitting the concessions to be withdrawn. Rather, he failed to take a decision, or if he did, it is unclear what he decided and why. The Judge did not identify that an application had been made; the reason for that application; and why, having conducted appropriate enquiries, he was reaching a decision to permit the withdrawal of the concession. On the face of the documents, there was no such application. Instead, in the respondent's review, there was a statement that the concession had been withdrawn. We do not accept as valid Mr Parvar's criticism that all of this could have been avoided had the appellant taken issue with the withdrawal of concession in the review in advance of the First-tier Tribunal hearing. Practically and realistically, the next stage beyond the review was the hearing itself. In the absence of an application by the respondent, Mr Mukherjee quite properly objected to the concession as a preliminary point at the hearing.
37. Having then noted Mr Mukherjee's objection to the withdrawal of the concession, the Judge then jumped straight to analysing the evidence about the

appellant's credibility at §13. Although (and only by implication) the Judge must have accepted that the concession had been withdrawn, the reader is left none the wiser about why, beyond the Judge's reference to the points raised by the respondent being clear and the appellant having had sufficient opportunity to obtain further evidence and to address the concerns. In particular, we accept the thrust of the appellant's submission that the Judge failed to consider why the original concession was made; why it was being withdrawn; and whether in those circumstances it was appropriate to permit the withdrawal. The Judge simply assumed that because there was no prejudice to the appellant that that was a sufficient answer. We do not accept that the respondent cannot change its mind about a concession, without any new evidence. It may be appropriate to do so, on the basis of a different view, taken by an alternative decision maker, because of a different understanding of the nuances of the evidence; or a different appreciation of the law. It may also be appropriate to do so, at 23rd July the stage of the review decision, bearing in mind that in some cases, applications to withdraw concessions have been allowed as late as the hearing itself. Nevertheless, as a minimum, and without falling into the trap of a rationality review, we have concluded that the parties should be clear on why it was now just and fair for the respondent to be permitted to withdraw its concessions.

38. Given the necessarily nuanced assessment of whether to permit the withdrawal of a concessions, which was never undertaken, we cannot conclude that any rational Tribunal would have reached the same decision (ASO (Iraq) v SSHD [2023] EWCA Civ 1282). We also conclude that the effect of the procedural error has been to deprive the appellant of a fair hearing, such that it is not appropriate to remake the decision ourselves. We apply §7.2 of the Senior President's Practice Statement and remit remaking to the First-tier Tribunal.

### **Notice of Decision**

39. **For the reasons set out above, we conclude that the Judge erred in law such that his decision is not safe and cannot stand. We set it aside, without preserved findings, in relation to the Judge's assessment of the appellant's credibility and without making any decision on whether the respondent ought to be permitted to withdraw her concession that the appellant had suffered adverse interest in her country of origin.**

### **Directions**

40. Remaking of the decision is remitted to the First-tier Tribunal to a Judge other than Judge Parkes at the Birmingham Hearing Centre, subject to any directions as the First-tier Tribunal thinks fit.

**J Keith**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**23<sup>rd</sup> July 2024**