



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

Case Nos: UI-2024-003712  
UI-2024-003713

First-tier Tribunal Nos:  
HU/56075/2023  
RP/50031/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 18 November 2024**

**Before**

**UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**SA  
(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr B Hawkin, counsel instructed by TNA Solicitors  
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**Heard at Field House on 28 October 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 parties may make an application on notice to vary this order.**

## **DECISION AND REASONS**

1. This is my oral decision which I delivered at the hearing today.

### **Introduction**

2. For ease in understanding this decision although the original Appellant was SA, I shall refer to him as the Claimant and I shall refer to the Secretary of State as the Respondent even though it is the Respondent who brings this appeal.
3. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Cameron who in a decision promulgated on 22 July 2024 had allowed the Claimant's appeal against the revocation of refugee status and had allowed the Claimant's appeal in respect of asylum and human rights.
4. Permission to appeal by First-tier Tribunal Judge Dixon who said as follows:

“Notwithstanding the requirement that reasons need only be adequate, for the reasons given in the grounds, I am persuaded that this is arguably an instance of inadequate reasons as regards the key cessation issue”.
5. The Secretary of State's grounds had referred to two particular aspects. Ground one alleged,

“Despite a relatively detailed decision, the findings of the FTTJ are confined to paragraphs 55–56. The rest of the decision is comprised of a record of the facts, and certain aspects of the evidence ... The RFRL dated 22 May 2022 ran to 19 pages, citing various objective sources as to the overall change in the country situation. Further, it took into account the overview of the UNHCR and made several points simply not engaged with ... In relying on the report of Dr O'Reilly, the FTTJ fails to engage with the criticism levied in the Respondent's review dated 30 May 2023, at paragraph 11”.
6. Ground 2 alleged that there were inadequate reasons/misdirection in law/failure to engage with material matters in respect of Article 3 and 8 of the ECHR. The grounds state that:

“At paragraphs 57 and 58 the FTTJ reflects on his conclusions on the cessation issue, and extremely briefly disposed of the matter”.

### **The Hearing Before Me**

7. I heard submissions first from Mr Tufan who amplified the grounds of appeal. He said it was regrettable that the Judge had not taken the plethora of evidence into account which had been provided to him. He said that the Judge's conclusion was embedded in a few paragraphs at 56 to 58 which was clearly an error of law. Mr Tufan said that a much more

detailed explanation was required as per the Home Office Review and refusal letter. Mr Tufan said that the second ground of appeal was that there was no analysis in respect of Article 3 and the revocation issue.

8. I had a Rule 24 Reply over the weekend on behalf of the Claimant. It was filed and served late, but I am prepared to take it into account in the interests of justice noting the serious issues to be considered relating to the protection claim and Rwanda.
9. On behalf of the Claimant, Mr Hawkin submitted that this was a very unusual case and that the Judge had set out a lot of detail in relation to the background of the case and main issues. It was not being submitted that the Judge had misdirected himself in any legal matter.
10. Mr Hawkin said that the critical starting point was paragraph 39 of the Judge's decision. The Judge had referred to the background to the Claimant's father's connection to mixed ethnicity. I was referred to paragraphs 39(iii), (iv) and (v). Mr Hawkin submitted that the Claimant would be persecuted by both sides and there were further matters set out with the main issues at paragraphs 40 to 52.
11. Mr Hawkin submitted that not a vast amount had needed to be said by the Judge because the factual background had been set out by the Judge. The Judge had said that although the Secretary of State had said that there was no longer wider ethnic conflict at paragraph 44, the Judge had noted that there were continued human rights abuses. I was referred to paragraphs 45 and 47 including a risk on return to failed asylum seekers who could be regarded as directly criticising the government.
12. Mr Hawkin also said that paragraphs 53 and 54 were referred to including reference to the burden being on the Secretary of State. I was taken to paragraphs 55 and 56. Mr Hawkin said that this was 'not one of those cases' where it was merely the historic issues, because there was the mixed ethnicity which was an accepted part of the factual matrix and so the Judge was entitled to conclude as he did at paragraph 56 when taking into account all the evidence. He also referred to the Claimant's mental health that the Secretary of State had not demonstrated anything sufficient. Mr Hawkin submitted that taken as a whole this was an intelligible, logical and reasonable decision. Mr Hawkin said he would go as far as to say that it was clearly the right decision on the facts.
13. Insofar as human rights issues were concerned, Mr Hawkin said the Judge did not need to consider that issue at any length because he had already found that the Claimant's refugee status should not be revoked. It was noted the Claimant had been in the United Kingdom for some 28 to 29 years at the time of the hearing before the First-tier Tribunal Judge. Mr Hawkin also referred to his original skeleton argument. Mr Hawkin also referred to a supplementary skeleton argument which has been forwarded to me this morning. He took me to the supplemental skeleton argument

at paragraphs 11(1) and 11(2). There was a reference to a combination with the original facts and to the grant of refugee status and to the expert evidence of Karen O'Reilly.

14. I then heard from Mr Tufan in reply. He concentrated on Mr Hawkin's submission in relation to the cessation of refugee status and the policy. Mr Tufan correctly observed that the policy aspect was not set out within Mr Hawkin's Rule 24 reply which is dated Sunday 27 October 2024 and which I admitted and read today, it being Monday 28 October. However, even taking into account the fact that the Rule 24 does not take the policy into account, Mr Tufan said that in any event the policy is expected to apply in the 'most exceptional of cases' and it was not clear how this Claimant's case falls within the most exceptional of cases.
15. Despite this being the Secretary of State's appeal, I nonetheless gave Mr Hawkin the final word who reiterated some of his earlier points.

### **Analysis and Conclusions**

16. In my judgment there is a material error of law in the Judge's decision. The Judge's reasoning is wholly inadequate. It is paragraphs 55 and 56 which provides the reasoning. In reality, it can be said that even then it is inly paragraph 56 which provides the fuller reasoning. The Judge had said at paragraphs 55 and 56:

"55. The UNHCR in their letter did make reference to country information which they concluded indicated that there was not such a change in circumstances. I do place weight on the country expert report of Ms O'Reilly which again set out a number of country reports from both the US State Department and Amnesty International and other organisations which all confirm that there are still serious human rights abuses taking place in Rwanda and that there is also an indication that simply claiming asylum in this country may be seen as being anti-regime by the current government.

56. After taking into account all of the evidence available to me and considering the various country reports I have been referred to and taking into account the appellant's mental health which would have a negative effect on his ability to return to Rwanda I am not satisfied that the respondent has demonstrated that the circumstances which justified the grant of refugee status have ceased to exist and that there are no other circumstances which would now give rise to a well-founded fear of persecution given the current government's view in relation to political opponents and that the current government imply a political opinion to those who have claimed asylum outside the country".

And then at paragraph 58 the Judge said:

"For the avoidance of doubt given those findings I accept that the appellant should therefore be seen as a refugee and given his mental health issues

and the time he has been in this country and his now lack of meaningful ties to Rwanda I do accept that there would be a breach of his rights under the convention and under article 3 and 8 of the ECHR”.

17. It is now well established that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding Tribunal.
18. I remind myself that the First-tier Tribunal is an expert tribunal. First-tier Tribunal decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts and tribunals should not rush to find such misdirection simply because they might have reached a different conclusion on the facts or expressed themselves differently. Lady Hale’s judgment in *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49; [2008] 1 AC 678, at [30] makes that clear.
19. I also remind myself that I must be particularly alert to ‘island hopping’. In *Volpi v Volpi* [2022] EWCA Civ 464; [2022] 4 WLR 48, at [65], the Court of Appeal said in respect of appeals against findings of fact:
  - ‘65. This appeal demonstrates many features of appeals against findings of fact:
    - i) It seeks to retry the case afresh.
    - ii) It rests on a selection of evidence rather than the whole of the evidence that the judge heard (what I have elsewhere called "island hopping").
    - iii) It seeks to persuade an appeal court to form its own evaluation of the reliability of witness evidence when that is the quintessential function of the trial judge who has seen and heard the witnesses.
    - iv) It seeks to persuade the appeal court to reattribute weight to the different strands of evidence.
    - v) It concentrates on particular verbal expressions that the judge used rather than engaging with the substance of his findings.’
20. I am therefore well aware that the expert First-tier Tribunal’s decision should not be interfered with by me merely because of disagreement. The First-tier Tribunal Judge had the benefit of the extensive submissions which were made by Mr Hawkin at the first instance hearing. Indeed, the Judge also had the various skeleton arguments and expert reports. Importantly the Judge also heard oral evidence, which I have not.
21. Despite all of those things, in my judgment and despite the reference by the Upper Tribunal and indeed the Court of Appeal to the need for first instance decisions to be focused, shorter and pithier, in this case the

deficiencies are manifest. As highlighted by Mr Tufan, the Respondent's refusal letter set out numerous aspects which were challenged and which made it a requirement for the Judge to deal with those core aspects, even if not all of the matters. The Respondent's review similarly raised numerous and various matters which the Judge was then required to consider and to provide reasoning in respect of.

22. Fairness has to apply to both sides and it is simply not possible for the losing party here, namely the Secretary of State, to see why in this instance her submissions and arguments failed. The Judge's reasoning is wholly deficient, limited as it was to paragraphs 55 to 56 and then at paragraph 58. Most of the decision is a recital of the evidence and not reasoning.
23. Therefore, despite the clear and helpful submissions of Mr Hawkin I am unable to agree with him. I conclude that there is a material error of law in the Judge's decision.
24. In respect of Mr Hawkin's additional submission made today without a notice and not in even in his Rule 24 of yesterday relating to the policy, that that is a matter which has to be considered in due course, but it is not a matter which enables me to conclude that the Judge's reasoning somehow became adequate. Nor do the new policy arguments enable me to conclude that the Judge's errors of law somehow lead to a conclusion that the errors are not material. In my judgment Mr Tufan is correct that an assessment needs to be made as to whether the Claimant's case falls into the most exceptional of cases as set out within that policy. Mr Tufan states it does not.
25. In the circumstances I conclude that there is a material error of law in the Judge's decision. That decision is set aside.
26. I canvassed with the parties the appropriate disposal if I was to find that there is a material error of law in the Judge's decision.
27. I apply *AEB* [2022] EWCA Civ 1512 and *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC). I carefully consider whether to retain the matter for remaking in the Upper Tribunal in line with the general principles set out in paragraph 7 of the Senior President's Practice Statement. I take into account the history of the case, the nature and extent of the findings to be made and in considering paragraphs 7.1 and 7.2 of the Senior President's Practice Statement and given the scope of the issues and findings to be made, I consider that it is appropriate that the First-tier Tribunal re-make the decision. I also do so on the basis of fairness because the Claimant wishes to raise matters relating to policy.

## **Notice of Decision**

The decision of the First-tier Tribunal contains a material error of law.

The decision of the First-tier Tribunal is set aside in its entirety.

There shall be a complete rehearing (de novo) at the First-tier Tribunal on all matters.

Directions will be for the First-tier Tribunal but I observe that the matter was listed for one day at the First-tier Tribunal on the previous occasion.

**Abid Mahmood**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
**28 October 2024**