



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

Appeal Number: HU/02606/2018

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 31<sup>st</sup> January 2019**

**Decision & Reasons  
Promulgated  
On 28<sup>th</sup> February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCGINTY**

**Between**

**MUHAMMAD NOUSHAD AFRIDI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss A Vitesh, Counsel instructed by Law Lane Solicitors  
For the Respondent: Miss Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Devittie promulgated on 2<sup>nd</sup> October 2018 following a hearing at Taylor House on 31<sup>st</sup> August 2018. At the First-tier Tribunal the Appellant appealed against the Respondent's decision to refuse the Appellant's application for leave to remain in the United Kingdom on human rights grounds. The Appellant, Mr Afridi, is a national of Pakistan who was born on 1<sup>st</sup> December 1984.

2. At the First-tier Tribunal the Appellant had relied upon evidence regarding longstanding problems that he had with his hearing and operations that he had undergone, in terms of a cochlear implant assisting his hearing and treatment that he would require on an ongoing basis in order to help monitor the cochlear implantation that had been undertaken.
3. At the First-tier Tribunal, First-tier Tribunal Judge Devittie it is accepted by both parties and also subsequently by the Judge (and I will come on to that in a second), gave an indication that he was going to be allowing the Appellant's appeal on human rights grounds. However, when the Judge then came to write up the decision, the Judge dismissed the appeal on human rights grounds. The Appellant has then sought to appeal that decision to the Upper Tribunal with the grounds being dated 11<sup>th</sup> October 2018. In the grounds of appeal it is said that it came as a surprise to the Appellant when he found out that the appeal had been dismissed given that the indication had been given that the appeal was going to be allowed, which is argued to be wrong, unlawful and procedurally unfair. It is argued that the Appellant would have a legitimate expectation that the decision written would be in accordance with an indication given by the Judge.
4. Counsel who attended at the First-tier Tribunal produced his note of the hearing making it quite clear in that note that the judge had given an unequivocal and clear indication that he was going to allow the appeal. He explained to the Appellant that the Respondent may well obviously seek to appeal that decision to the Upper Tribunal. Permission to appeal was initially refused by First-tier Tribunal Judge Ford on 23<sup>rd</sup> October 2018 who found at that date that the application being accompanied by an unsigned witness statement from Counsel appeared with the Appellant at the hearing, but the Record of Proceedings did not record that the Tribunal indicated that the appeal would be allowed and in the absence of that, he did not grant permission to appeal. Permission to appeal was however then granted by Upper Tribunal Judge Macleman on 17<sup>th</sup> December 2018 who found that the grounds were now supported by Counsel's typed attendance note and counsel's signed statement and raised issues which brought about the resolution of the issue at a hearing.
5. The Upper Tribunal through Upper Tribunal Judge O'Connor has actually sought comments from First-tier Tribunal Judge Devittie himself. On 31<sup>st</sup> December 2018 Judge Devittie made the following observations:-

*"I accept that Counsel's notes are not accurate records of what I said. I very much regret the error and its consequences for the Appellant. The Record of Proceedings will show that in an effort to ensure that I would not miss the fact that I had allowed the appeal when writing up my determination I wrote the words 'appeal allowed' in capital letters twice and underlined them. Regrettably my decision to allow the appeal still escaped my attention when I came to writing the determination several days later".*

6. In light of that memorandum both parties, Miss Vitish, Counsel for the Appellant and Miss Everett, Senior Home Office Presenting Officer on behalf of the Secretary of State, agreed that as the Judge has now himself indicated that he had said that he would be allowing the appeal but went on in writing to dismiss it, that does amount to a procedural error. The Appellant was entitled to expect and had a legitimate expectation that the decision written would be in accordance with the indication given and reasons given to support that finding. It cannot be fair for a judge to give an indication that an appeal would be allowed and then go on subsequently to dismiss the appeal. That clearly is a material error of law. I therefore find that the decision of First-tier Tribunal Judge Devittie should be set aside in its entirety.
7. Both parties also agree that as a result of setting that decision aside the case should be remitted back to the First-tier Tribunal for rehearing rather than simply the appeal being allowed outright, for although First-tier Tribunal Judge Devittie had given an indication that he was going to allow the appeal, no reasons for that decision were given. Clearly, both parties, both the Appellant and the Secretary of State have a legitimate expectation that a reasoned decision will be given and both parties will be entitled to look at those reasons to make sure that they are legally sound and to challenge that decision if they consider those reasons are not legally sound.
8. In the absence of any reasons being given by First-tier Tribunal Judge Devittie I do not consider that this is a case where the appeal can simply be allowed outright on the basis of that indication. Clearly, I have not heard the evidence in this case and obviously I cannot utilise findings made by Judge Devittie to allow the appeal outright at this stage, given the reasons actually given by Judge Devittie went the other way and he dismissed the appeal. I agree with both Counsel that effectively this case has to be reheard with the decision being set aside and therefore I remit the case back to the First-tier Tribunal for rehearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge Devittie.

### **Notice of Decision**

The decision of First-tier Tribunal Judge Devittie does contain a material error of law and is set aside in its entirety. The case is remitted back to the First-tier Tribunal for rehearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge Devittie.

No anonymity direction is made.

Signed

Dated 31<sup>st</sup> January 2019

R McGinty

Deputy Upper Tribunal Judge McGinty

