



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2020-000020
First-tier Tribunal No:
PA/09534/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 November 2023

Before

UPPER TRIBUNAL JUDGE OWENS

Between

SECRETARY OF STATE FOR THE HOME OFFICE

Appellant

and

Ahmad Miah
(NO ANONYMITY ORDER MADE)

Respondent

Decided on the papers

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Kudhail dated 20 November 2019 allowing his appeal against the decision dated refusing his protection and human rights claim.
2. Permission was granted by Upper Tribunal Judge Martin on 3 January 2020 on the basis that it is arguable given the findings in the decision that the judge intended to dismiss the appeal. There was a significant delay in the appeal being listed which appears to have been for administrative reasons.
3. On 2 October 2023 this Tribunal issued directions (dated 13 September 2023) indicating that in view of the three-year delay in listing the appeal, the appropriate course of action is to set aside the decision in its entirety and remit the appeal for a fresh oral hearing. This was a human rights appeal, and the Tribunal recognises that the appellant's circumstances may have changed in the meantime. The directions asked both parties whether they consented to this course of action, and whether they consented to the error of law application to be determined without a hearing and for the decision being made without written reasons. If the

responses were not received within 14 days, the Tribunal would infer that the parties were in agreement with this course of action.

4. The appellant's representative had the courtesy of responding in writing on 12 October 2023 within the 14-day time that the appellant was in agreement with the proposed course of action. On 17 October 2023 the Tribunal sent a reminder to the respondent. There was no response from the respondent. In the original directions of 2 October 2023, the parties were notified that if they did not respond within 14 days of the directions being issued, it would be assumed that they had consented to the proposed course of action.
5. I made a decision on 18 October 2023 in the absence of a response from the respondent that both parties had given either their explicit or deemed consent for this appeal to be decided on the papers and for the decision to be set aside and remitted to the First-tier Tribunal for a de novo hearing. In these circumstances I am not required to give detailed reasons pursuant to rule 40(3)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008. This decision was forwarded to the promulgations team to be sent out.
6. On 23 October 2023, I received a response from the respondent. This was 7 days outside the 14-day time limit and there was no explanation for the delay. I note that it is in the interests of justice for there to be procedural rigour because this promotes consistency and transparency. The respondent had an opportunity to make representations and missed the deadline. Further, the respondent mistakenly refers to the decision being in respect of a protection claim. This is misconceived, the appeal was pursued on Article 8 ECHR grounds only. There is an obvious error and whilst it would have been appropriate to deal with this matter by setting the decision aside and re-making the appeal as the judge intended in 2019, it is now four years later. I am satisfied that there is an obvious error of law and that because of the delay it is fair to dispose of this appeal by setting the decision aside on the papers. That much is agreed by the respondent. Both parties are in agreement with this course of action.
7. However, in terms of disposal, because of the delay I am satisfied that the correct course of action is to remit this appeal to the First-tier Tribunal to be heard de novo with no findings preserved.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law.
2. The decision is set aside in its entirety.
3. The appeal is remitted to the First-tier Tribunal to be heard de novo by a judge other than First-tier Tribunal Judge Kudhail.

Case No: UI-2020-000020
First-tier Tribunal No: PA/09534/2019
R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 November 2023