



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

Appeal Numbers: DA/00260/2014

**THE IMMIGRATION ACTS**

**Heard Field House, London  
on 16 October 2014**

**Determination  
Promulgated  
on 3 November 2014**

**Before**

**The President, The Hon. Mr Justice McCloskey &  
Upper Tribunal Judge Reeds**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR METIN POLAT**

Respondent

**Representation:**

Appellant: Ms L Appiah (of Counsel), instructed by Kilic and Kilic Solicitors.

Respondent: Mr T Wilding, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This decision has its origins in a deportation order made by the Secretary of State dated 28 January 2014. By the terms of this order the Respondent to this appeal, Metin Polat, was to be deported by the Secretary of State from the United Kingdom. The background to the decision and the supporting reasons were, as is customary, elaborated in some detail.
2. Mr Polat appealed to the First-tier Tribunal (hereinafter the "FtT"). The grounds of his appeal were twofold. First, it was contended

that the Secretary of State's decision was unlawful as it represented a disproportionate breach of Mr Polat's rights under Article 8 of the Human Rights Convention. Second, it was contended, without any particularisation, that the decision was not in accordance with the Immigration Rules. The decision of the FtT adverted to the new statutory regime introduced by section 19 of the Immigration Act 2014. This was followed a reference to the new provisions, in the following passages:

*"[4] Particularly relevant are sub paragraphs (4) and (5). The decision was made in January 2014, prior to these provisions being in place. Section 19 came in effect on 28 July 2014. Therefore, even though the decision was lawful at the date of decision, this is no longer the case as these provisions apply in this matter and there is no mention of them in relation to consideration of Rule 399(b) of HC 395 which has been amended since the decision was taking and reflects broadly the provisions in section 117C.*

*[5] I find that it is therefore appropriate to remit the matter back to the respondent to consider the factors as I should not become the primary decision maker, certainly in the case of the new section 19 provisions which clearly have a significant bearing in the matter when considering the fact of this particular case. In other words, the decision to remit is fact sensitive.*

*[6] Mr Ali agreed for the matter to be remitted back. Ms Ayodele stated she was in my hands in relation to the decision to remit.*

*[7] Finally, I would suggest that it would be prudent for those representing the appellant to ensure that they send to the respondent any relevant new documentary evidence in relation to the appellant's claim to coincide with the timing of the promulgation of this determination so that this can be properly considered by the respondent when she remakes her decision.*

## **DECISION**

*[8] The appeal is allowed to the limited extent that it is remitted back to the respondent to reconsider the appellant's case in line with what is stated at paragraphs four and five of this determination."*

Permission to appeal was granted to the Secretary of State. The grounds of appeal focused exclusively on the impact of s.117A of the 2002 Act as introduced by s.19 of the new Immigration Act 2014.

3. As we indicated at the outset of the hearing, it appeared to us that there was an obvious and fundamental anterior question, namely: what order did the FtT actually make? In paragraphs 4, 5, 6 and 8 of the determination the judge repeatedly uses the terminology “remit” and a number of derivatives from the verb ‘to remit’. If the Judge had intended to allow the appeal one would expect something as elementary as that to be expressed in unambiguous language. There is no such expression anywhere to be found in his determination. If the Judge had intended to exercise the statutory power conferred on the FtT to allow the appeal and give a direction for the purpose of giving effect to the decision to allow the appeal one would also expect that to be expressed in unequivocal terms. There is no such statement to be found in the determination. We conclude, without any hesitation, that the Judge made a pure remittal order. We consider this to be the only realistic construction which can be placed on the relevant passages in the determination of the FtT.
4. The powers available to the FtT are those set out in Part 5 of the Nationality Immigration and Asylum Act 2002. Within those provisions there is no power to make a pure remittal order. This has already been decided by the Upper Tribunal in the case of Greenwood. Accordingly, the first error of law which vitiates the determination of the FtT is the making of an order which was ultra vires, that is to say beyond the Tribunal’s powers.
5. We turn to consider a quite separate issue. In making this order, the Judge purposefully declined to decide any of the grounds of appeal. Thus there was no examination of the ground of appeal which complained that the impugned decision was a disproportionate breach of the rights of those concerned, that is the Appellant and the other family members, under Article 8 of the Human Rights Convention. Furthermore, the Judge gave no consideration to the written evidence, he received no oral evidence and he made no findings of any kind in relation to the Article 8 ground of appeal. Those failings, in our judgment, constitute a free standing error of law. It was incumbent upon the Judge to conduct this necessary exercise and he failed to do so. See the recent decision of the Court of Appeal in YM (Uganda) v the Secretary of State [2014] EWCA Civ 1292, [36]-[39] especially. We conclude that the judge’s abdication of decision making responsibility is incompatible with s.117A(1) of the 2014 Act. In short, the judge misconstrued the new statutory provisions.
6. The materiality of both errors of law is beyond plausible dispute. Accordingly this appeal succeeds. We make the following order:
  - (i) we set aside the determination of the First-tier Tribunal;
  - (ii) it follows inexorably from our analysis above that we allow the Secretary of State’s appeal, and

- (iii) given that there was no proper hearing at first instance we remit the case to the same constitution of the FtT for rehearing and fresh decision.

THE HON. MR JUSTICE MCCLOSKEY  
PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER

Date: 24 October 2014