



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

Appeal Number: IA/32793/2014

THE IMMIGRATION ACTS

**Field House
8 February 2016**

**Determination Promulgated
19 February 2016**

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

The Secretary Of State For The Home Department

Appellant

and

Balogun

Respondent

DECISION AND REASONS

1. In order to avoid the parties in the unnecessary incurrence of costs, I have decided to make a decision in accordance with Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 without a hearing.
2. The Secretary of State seeks an order that the First-tier Tribunal Judge (i) made an error of law and (ii) the First-tier Tribunal Judge should have 'remitted' the matter back to the Secretary of State for her to make a fresh decision. (In fact the form of order is that the Secretary of State's decision was unlawful and accordingly the appellant's application remains outstanding for the Secretary of State to make a fresh and lawful decision in accordance with *Abdi* principles.)

3. By letter received by the Upper Tribunal on 8 February 2016 enclosing a Rule 24 response dated 2 February 2016, Mr Balogun's counsel concedes that the First-tier Tribunal Judge Coutts made an error on a point of law requiring the Secretary of State to make a fresh and lawful decision.
4. The effect of the grounds and the Rule 24 response is that the parties are *ad idem* and that no further issue remains between them requiring the determination of the Upper Tribunal at a hearing. There is no difference between this situation and a consent order made pursuant to Rule 39(1).
5. If either party objects to my use of Rule 34 in the absence of a consent order signed by the parties, they are at liberty to apply to me to set aside my decision under Rule 43 on notice and on showing cause why the procedure I have adopted is irregular.

DECISION

1. The Judge made an error on a point of law and I re-make the decision to the limited extent of allowing the Secretary of State's appeal and setting aside the decision of the First-tier Tribunal and substituting a decision in the following terms:

Mr Balogun's application remains outstanding for the Secretary of State to make a fresh and lawful decision.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL