Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/07050/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9th June 2017	**On 20th June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR VIKRAM SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No Attendance
For the Respondent: Miss J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of India born on 17th July 1984. The Appellant made claim for asylum based upon a fear that if returned to India he would face mistreatment due to belonging to Suthar, a backward caste. That application was refused by the Secretary of State by Notice of Refusal dated 29th June 2016. The Appellant appealed and the appeal came before Immigration Judge Samimi sitting at Hatton Cross on 9th December 2016. In a Decision and Reasons promulgated on 12th January 2017 the Appellant's appeal was recorded as having been allowed on asylum grounds and on human rights grounds.

2. The Secretary of State lodged Grounds of Appeal to the Upper Tribunal on 22nd January 2017. Those grounds contended that it was clear from the

findings within the determination at paragraphs 11 and 12 that the judge had meant to dismiss the appeal under asylum and human rights grounds rather than to allow it. However, on the basis as set out in *Katsonga v the Secretary of State for the Home Department [2016] UKUT 228* as the "slip rule" cannot be used to reverse the effect of the decision the entire decision would need to be set aside as the First-tier Tribunal Judge had failed to give adequate reasons for the conclusions.

3. On 28th April 2017 Judge P J M Hollingworth granted permission to appeal. Judge Hollingworth noted that the decision did not reflect the reasoning of the judge and it was unclear why the judge has allowed the appeal given his reasoning. No Rule 24 response was served.

4. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant does not appear. The Respondent appears by her Home Office Presenting Officer, Ms Isherwood. For the purpose of continuity within these proceedings I refer to the Secretary of State as the Respondent albeit that this is an appeal brought by the Secretary of State.

5. As a starting point Ms Isherwood draws to my attention the fact that the Appellant is not present. She points out that the Appellant made application for a residence card in February 2017 which was rejected. She points out that his address which is the address upon which he has been served in these proceedings remained the same and she submits that service of due notice upon him at his address is valid service. I note that fact and I also note that there is no document in the file indicating or suggesting that the notice of hearing has been returned. In these circumstances I find that there has been due and proper service of this hearing upon the Appellant.

Submission/Discussion

6. Ms Isherwood takes me to paragraphs 11 and 12 of the judge's decision. I note from within those paragraphs that the judge had stated:

> "11. I find that the Appellant has not substantiated his claim and would be able to seek the protection of the police in India. There is no evidence before me to support the Appellant's claim that there is no sufficiency of protection within the meaning of **Hovarth [2000] UKHL** in India. I find that given the Appellant is a healthy young man it is reasonable to expect him to seek internal relocation within India. I do not find that the Appellant has satisfied the lower burden of proof in relation to the Refugee Convention.
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> 12. There is no suggestion that the Appellant meets Appendix FM and or paragraph 276ADE of the Immigration Rules. … The Appellant has not submitted any evidence of his continued parental relationship with his child or that he has been in a

durable relationship with an EEA national in accordance with the EEA Regulations."

The Law

7. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

8. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings & Remaking the Decision

9. It is clear from paragraphs 11 and 12 of the judge's decision that the judge did not endorse nor accept, the Appellant's claim and that he found against the Appellant in his claim. It is clear therefore in such circumstances that the decision to allow the appeal constitutes a material error of law. There is no challenge made to the findings of the First-tier Tribunal Judge consequently the correct approach is to note and record those findings as being preserved, to find that there a material error of law in the decision of the First-tier Tribunal Judge and to remake the decision dismissing the Appellant's appeal on all grounds.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and is set aside. The decision of the First-tier Tribunal Judge is remade dismissing the Appellant's appeal on asylum and on human rights grounds.

No anonymity direction is made.

Signed D N Harris Date 15th June 2017
Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed D N Harris Date 15th June 2017

Deputy Upper Tribunal Judge D N Harris