



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

**Appeal Numbers: UI-2022-000172
HU/06292/2020**

THE IMMIGRATION ACTS

**Decided at Field House
On 11 October 2022**

**Decision & Reasons Promulgated
On 21 November 2022**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

**VLADIMIR TOLLUMI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. This decision is made without a hearing under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Consequent to the respondent confirming that she has taken the step of withdrawing the relevant deportation decision dated 23 September 2019, observing the importance of these proceedings to the appellant and being mindful of the overriding objective that requires the Tribunal to deal with cases fairly and justly, I am satisfied that it is just and fair to proceed to consider this matter under rule 34.
2. Consequent to a decision dated 14 February 2022, the appellant was successful on appeal before the First-tier Tribunal (Judge of the First-tier Tribunal Karbani). The respondent was granted permission to appeal and by a decision sent to the parties on 31 May 2022 the Upper Tribunal (Hill J and Upper Tribunal Judge Bruce) set aside the decision of the First-tier Tribunal, to the limited extent identified within the decision.

3. By a letter sent to both the appellant and the Upper Tribunal, dated 4 October 2022, Ms. Willocks-Briscoe of the respondent's specialist appeals team confirmed that consequent to the preserved factual findings of the First-tier Tribunal and upon an assessment of such facts in light of the judgment of the Grand Chamber in Case C-165/16 Lounes v. Secretary of State for the Home Department EU:C:2017:862 [2018] QB 1060 the respondent had taken the step of withdrawing her deportation decision. It was accepted that in light of the judgment in Lounes and based upon the preserved findings of fact the appellant was captured by section 33 of the Borders Act 2007 ('the 2007 Act').
4. The Upper Tribunal was asked by the respondent to exercise its case management powers under rule 5(1) and (2) of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('the 2008 Rules') and treat the appeal as finally determined without need for a further hearing.
5. By email correspondence dated 7 October 2022 the appellant's legal representatives, Cromwell Wilkes, confirmed the appellant's agreement that the matter be finally determined following the withdrawal of the deportation decision.
6. The Upper Tribunal confirmed in SM (withdrawal of appealed decision: effect) Pakistan [2014] UKUT 64 (IAC) that rule 17 of the 2008 Rules, concerned with withdrawal, does not enable the Upper Tribunal to withhold consent to the withdrawal by the respondent of the decision against which a person appealed to the First-tier Tribunal.
7. The Upper Tribunal confirmed in SM that where such a decision is withdrawn in appellate proceedings the Tribunal continues to have jurisdiction under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007 to decide whether to re-make the decision in the appeal, notwithstanding the withdrawal of the appealed decision. Withdrawal is not, without more, one of the ways in which an appeal under section 82 of the Nationality, Immigration and Asylum Act 2002 ceases to be pending. Consequently, withdrawal does not terminate the appellant jurisdiction of the Tribunal and it may complete its appellate functions by remaking the decision. Further, withdrawal of the respondent's decision does not mean that an appeal must be treated as academic.
8. I am required to apply the overriding objective confirmed by rule 2 of the 2008 Rules and to have regard to all relevant matters, including the principle that the respondent should, ordinarily, be the primary decision-maker in the immigration field and the reasons underlying the respondent's withdrawal of the appealed decision.
9. In this matter the respondent has accepted that the appellant is favourably caught by Exception 7 established by section 33 of the 2007 Act. I observe the definition of 'relevant person' in respect of Exception 7 identified by regulation 12(1)(m) of the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020. This is a

determinative factor in my proceeding to formally consider and allow the appeal.

Notice of Decision

10. Upon the Upper Tribunal having previously set aside the decision of the First-tier Tribunal the decision is remade, and the appellant's appeal is allowed.

Signed: D. O'Callaghan
Upper Tribunal Judge O'Callaghan

Dated: 11 October 2022