



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-006601

First-tier Tribunal No: PA/51991/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

18<sup>th</sup>

September 2023  
**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SAFFER**

**Between**

**EERS**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**On the papers**

**Due to be heard at Phoenix House (Bradford) on 18 September 2023**  
**Considered on 14 September 2023 by consent**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. I shall refer to EERS as the Appellant and the Secretary of State for the Home Department as the Respondent throughout for consistency with the First-tier Tribunal decision.
2. The Appellant was born on 27 August 1979. He is a citizen of El Salvador. He appealed against the decision of the Respondent dated 1 April 2021, refusing his claim to be a refugee. He was granted humanitarian

protection. His appeal against the refusal of the claim to be a refugee was allowed by First-tier Tribunal Judge Rose following a hearing on 15 July 2022.

### **Permission to appeal**

3. Permission to appeal was granted by First-tier Tribunal Judge Komorowski on 6 December 2022 the detail of which is not necessary to record here.

### **Subsequent developments**

4. On 7 September 2023 the Appellant's Solicitor emailed the Upper Tribunal saying;

*"We write after having taken instructions from the above named. Our client has previously been granted HP by the Home Office and is content with the same. He wishes to withdraw from the current application and does not wish to contest the same. We therefore request that the hearing scheduled for 18.09.2023 is vacated."*

5. On 13 September 2023 the Respondent emailed the Upper Tribunal consenting to the withdrawal and drafted the following which was agreed to by the Appellant's Solicitor and which I have amended by referring to ERSS as the Appellant, and the Secretary of State as the Respondent ;

*"Pursuant to Rule 39(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008, the parties consent to the disposal of the above appeal on the following agreed basis:*

1. *Upon the Appellant accepting the grant of Humanitarian Protection afforded to him by the Respondent, and him expressly not wishing to contest the appeal raised by the Respondent which has gained permission to be heard in the Upper Tribunal, it is proposed that the Upper Tribunal dispose of the matter under Rule 39(1) of the 2008 Tribunal Rules, without a hearing.*
2. *Upon the Respondent proposing the Upper Tribunal find that the grounds having garnered permission are made out, by consent, the Upper Tribunal does determine the matter under consideration in the Respondent's favour, and overturn that portion of the FTT decision allowing the Appellant's appeal in respect of his Asylum claim, as found by FTT IJ, and uphold the FTT decision on Humanitarian Grounds only.*
3. *By consent, the parties agree the Upper Tribunal be minded to find in the Respondent's favour as outlined at paragraph 2, and as a result, the hearing currently listed before the Upper Tribunal on 18<sup>th</sup> of September at IAC Bradford be vacated."*

### **Discussion**

6. Having considered the matter, I am satisfied it is in the interest of justice to proceed in the manner proposed. I am accordingly satisfied that there is a material error of law for these reasons set out in the grant of permission to appeal. I set aside the decision. I remake the decision allowing the Respondent's appeal. The Appellant retains the Humanitarian protection already granted to him.

## Notice of Decision

7. The Judge made a material error of law. I set aside that decision. I remake the decision. I allow the Respondent's appeal.

*Laurence Saffer*

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

14 September 2023

## NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **"working day"** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. **The date when the decision is "sent" is that appearing on the covering letter or covering email.**

