



**Upper Tribunal
(Immigration and Asylum Chamber)
Number PA/03092/2019**

Appeal

THE IMMIGRATION ACTS

Heard at George House, Edinburgh

**Decision & Reasons
Promulgated**

On the 6 April 2022

On the 19 April 2022

Before

UT JUDGE MACLEMAN

Between

Sami Kareem Al-SHAMMARI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Katani & Co,
Solicitors

For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This determination follows on from:
 - (i) The respondent's decision dated 21 March 2019.
 - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
 - (iii) The decision of FtT Judge Rea, promulgated on 17 August 2019.
 - (iv) The appellant's grounds of appeal to the UT, stated in the applications for permission to appeal filed with the FtT and with the UT.
 - (v) Refusals of permission by the FtT and the UT.

- (vi) The Lord Ordinary’s decision, dated 8 July 2020, refusing to grant permission to proceed with judicial review of the UT’s refusal of permission.
 - (vii) The opinion of the Court, [2021] CSIH 26, delivered by Lady Paton, dated 30 April 2021.
 - (viii) The joint minute subsequently entered into between the parties.
 - (ix) The UT’s grant of permission dated 14 February 2022, in light of the Court’s interlocutor and the joint minute.
2. The decision of the Court turned on the FtT’s treatment of evidence from the witness Naef Abdulla Al-Shammari (“Naef”). The Court at [14] held it to be arguable that the FtT erred either by not having proper regard to Naef’s evidence, or by rejecting it without saying so or explaining why. The joint minute is based on that issue.
 3. By an email dated 22 March 2022 the respondent advised (somewhat unhelpfully) that she “does not propose to submit a rule 24 response to the grant of permission”.
 4. Mr Diwnycz (who was not the author of the non-response) conceded that the FtT erred by not saying what it made of the evidence of Naef. He also accepted that to contend that it was an error of no consequence was “an uphill struggle”.
 5. I indicated that the decision of the FtT fell to be set aside, because the omission in the decision is not so immaterial that the same conclusion must have been reached, without the error.
 6. Parties agreed that on that view, the outcome should be as follows.
 7. Under section 12 of the 2007 Act, and under Practice Statement 7.2, the decision of the FtT is set aside. It stands only as a record of what was said. The case is remitted to the FtT for a fresh hearing, not before Judge Rea.
 8. No anonymity direction has been requested or made.

H Macleman

7 April 2022

UT Judge Macleman

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.