



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002345

First-tier Tribunal No: HU/00566/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 10 February 2025

Before

UPPER TRIBUNAL JUDGE OWENS
UPPER TRIBUNAL JUDGE RASTOGI

Between

AURICA VADUVA
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION MADE PURSUANT TO RULES 34 AND 39 OF THE
TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Loke dated 6 February 2023 dismissing his appeal against the respondent's refusal of his human rights claim.
2. The judge found that the appellant's deportation did not fall to be considered in line with EU law. The grounds of appeal asserted that the judge had erred in law. By the date of the error of law hearing on 29 October 2024, the applicant submitted a skeleton argument advancing one further ground that the decision was not in accordance with Abdullah and Ors (EEA; deportation appeals procedure) [2024] UKUT 00066 (IAC) reported after the hearing before the First-tier Tribunal but before the appeal was determined and the decision promulgated.
3. On that occasion, given the complex and evolving legal background, we found that it was in the interests of justice for the appellant to be able to amend ground 1(a) as formulated in the skeleton argument and we granted the respondent an adjournment so that the matter could be

referred to the specialist team for further consideration. We gave directions on 23 October 2024 to that effect.

4. On 21 November 2024, we were provided with a position statement from the respondent who agreed that at the point of the EUSS application on 27 February 2023 the temporary protections under the Withdrawal Agreement arose and that the judge had therefore erred in finding that the appellant's deportation did not fall to be considered in line with EU law. The respondent conceded that following Abdullah the parties ought to have applied for permission to adjourn the substantive appeal at the First-tier Tribunal until the EUSS application had been determined. The respondent indicated that the EUSS decision would be served afresh taking into account the judge's comments.
5. In view of this, the respondent indicated that they consented to the decision being set aside and remitted to the First-tier Tribunal for it to be managed alongside the outstanding EUSS appeal.
6. On 4 December 2024, we received a reply from the applicant indicating that it was not clear on what basis the error of law had been considered and requesting an error of law hearing to consider all of the grounds.
7. On 10 December 2024 the respondent made an application for costs. The applicant has also made submissions on costs and these are dealt with in a separate decision which will be sent out with this decision.
8. On 22 January 2024 we issued further directions indicating that in our preliminary view the appropriate disposal of the appeal was to set the decision aside in line with the concession by the respondent that the deportation appeal should have been adjourned for consideration of the EUSS matter and that the judge erred in law in not doing so and that the appeal should be remitted to the First-tier Tribunal. In our preliminary view amended ground 1(a) was made out and the remaining grounds fell away. It was agreed that the appellant had obtained permanent residence in the UK.
9. We directed the parties to indicate if they had any objection to the Tribunal disposing of the matter on this basis without an oral hearing.
10. On 27 January 2025 the respondent replied indicating that there was no objection to the appeal being disposed of in this manner and on 24 January 2025 the applicant also indicated by email that there were no objections to this disposal.
11. On this basis, we are satisfied that both parties consent to the decision of First-tier Tribunal Judge Loke being set aside on the papers without an oral hearing because it contains a material error of law in that she erroneously found that the deportation appeal could not be considered in line with EU law and failed to adjourn the hearing for the EUSS appeal to be dealt with first. All parties are agreed that the appeal

should be remitted to the First-tier Tribunal for a de novo hearing before a judge other than First-tier Judge Loke with the only finding preserved that the appellant had acquired permanent residence in the UK. The EUSS appeal currently before the First-tier Tribunal will be dealt with first.

Notice of Decision

12. The decision of the First-tier Tribunal involved the making of an error of law.
13. The decision of the First-tier Tribunal is set aside in its entirety with the finding at [11] above preserved.
14. The decision is remitted to the First-tier Tribunal for a de novo hearing before a judge other than First-tier Tribunal Judge Loke.

R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 February 2025