



**THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)**

**UPPER TRIBUNAL CASE NO: UA-2022-001805-GIS
[2024] UKUT 412 (AAC)**

**ATAF EBRAHIM, MIZBAH ATCHA AND EBRAHIM & CO V IMMIGRATION SERVICES
COMMISSIONER**

Decided without a hearing

Representatives

Claimants Spoke on their own behalf

Commissioner Fairouz Fadhl, legal adviser to the Commissioner

DECISION OF UPPER TRIBUNAL JUDGE JACOBS

On appeal from the First-tier Tribunal (General Regulatory Chamber)

References: IMS/2014/0013 and IMS/2016/0013

Decision date: 18 May 2022

The decision of the First-tier Tribunal did not involve the making of an error on a point of law under section 12 of the Tribunals, Courts and Enforcement Act 2007.

REASONS FOR DECISION

1. This case is about the First-tier Tribunal's power to deal with a prohibition from providing immigration advice and immigration services under the Immigration and Asylum Act 1999.

A. History and background

2. There are three appellants in this appeal. Throughout the cases, there has been some confusion about which of the three were appellants. Trying to separate them is artificial, so I have named all three. The reality is that Ebrahim & Co is operated by Mr Ebrahim and Ms Atcha. The First-tier Tribunal named all three as appellants. And the Commissioner's submission on the application for permission said that Ms Archa's fitness and competence was one of the issues before the First-tier Tribunal.

3. The respondent is the Commissioner for Immigration Services Commissioner who is the regulator for immigration advice and immigration services.

B. The First-tier Tribunal's decision

4. The appellants appealed against two decisions of the Commissioner. The First-tier Tribunal's jurisdiction on the appeals derived from the Immigration and Asylum Act 1999.

5. The final paragraph of the First-tier Tribunal's written reasons reads:

111. Therefore, pursuant to s89(8) of the Act we direct that Mr Ebrahim, Ms Atcha and Ebrahim & Co should be prohibited from providing immigration advice or immigration services regulated by the OISC indefinitely.

C. The application for permission to appeal to the Upper Tribunal

6. The appellants applied to the Upper Tribunal for permission to appeal. I directed an oral hearing of the application. Mr Ebrahim and Ms Atcha attended. The Commissioner did not attend, but sent a written submission.

7. The appellants complained that an indefinite prohibition was harsh and was only available if there had been a criminal charge. The Commissioner argued that they were confusing indefinite prohibition with suspension and the tribunal had power to make the order. I did not accept either of those arguments.

The grant of permission

8. However, having looked again at the legislation in the light of the arguments, I identified one point of law. The point was that the tribunal may have had no power to order an indefinite prohibition at all, regardless of its duration. I gave permission limited to that ground.

9. The tribunal identified section 89(8) as the source of its power to order an indefinite prohibition. Section 89(1) provides:

(1) This section applies if the First-tier Tribunal upholds a disciplinary charge laid by the Commissioner under paragraph 9(1)(e) of Schedule 5 against a person ('the person charged').

And section 89(8) provides:

(8) The First-tier Tribunal may direct that the person charged or any person acting on his behalf or under his supervision is to be-

...

(c) prohibited from providing immigration advice or immigration services indefinitely.

10. Paragraph (9)(1)(e) of Schedule 5 provides:

(1) On determining a complaint under the complaints scheme, the Commissioner may-

...

(e) lay before the First-tier Tribunal a disciplinary charge against a relevant person.

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11. These cases came before the First-tier Tribunal as appeals against decisions made by the Commissioner on 2 April 2014 and 7 October 2016. The Commissioner did not lay a disciplinary charge before the tribunal.

12. The appellants argued that the tribunal should have exercised the power under section 87(4). This provides that:

(4) For further functions of the First-tier Tribunal under this Part, see paragraph 9(1)(e) of Schedule 5 (disciplinary charges laid by the Commissioner) and paragraph 4B of Schedule 6 (suspension of registration by First-tier Tribunal).

This provision does not help the appellants, because it also refers to paragraph 9(1)(e).

13. The Commissioner argued that tribunal had power to order an indefinite prohibition under rule 6(1) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (SI No 1976). This provides:

(1) The Tribunal may give a direction on the application of one or more of the parties or on its own initiative.

I did not accept that argument. The rules were made under the authority of sections 9(3), 22 and 29(3) and (4) of, and Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007. There is nothing in any of those provisions that would authorise a power to confer on the First-tier Tribunal powers of disposal additional to those conferred by the 1999 Act.

14. The result is that the First-tier Tribunal had no power on appeal to order an indefinite prohibition. I gave permission on that ground.

Other grounds

15. I limited my grant of permission to the issue I have just explained. I refused permission on the remainder and gave my reasons for doing so. They are outside the scope of this appeal and I need say no more about them.

D. The appeal to the Upper Tribunal

The Commissioner's response

16. The Commissioner responded to the appeal. The argument was that as the tribunal had dismissed the appeals to the First-tier Tribunal, the proper course was to dismiss the appeals to the Upper Tribunal. The Commissioner submitted that there was no need for an oral hearing.

The appellant's reply

17. The appellants replied. They did not address the ground on which I gave permission, but have continue to address the other grounds on which I refused permission. They asked for an oral hearing.

My conclusion

18. I gave permission to appeal limited to one ground. That is the only issue on the appeal.

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19. The appellants' arguments relate to matters that are outside the scope of the appeal. I need say no more than that. In those circumstances, an oral hearing is not appropriate.

20. I remain of the view that I explained in my grant of permission to appeal. That leaves only the issue of disposal. As the Commissioner points out, the First-tier Tribunal dismissed the appeals against the Commissioner's decisions. Those decisions therefore stood. The result of my analysis is that the tribunal's final paragraph was otiose and did not affect the ultimate outcome of the appeal. I have therefore dismissed the appeal to the Upper Tribunal.

**Authorised for issue
on 10 December 2024**

**Edward Jacobs
Upper Tribunal Judge**