ASYLUM AND IMMIGRATION TRIBUNAL

MS (Reconsideration - Discontinuance by Secretary of State) Sudan [2005] UKAIT 00129

THE IMMIGRATION ACTS

Heard at: Field House
On 25 August 2005

Determination Promulgated
14th September, 2005
……

Before:

Mr H.J.E. Latter, Senior Immigration Judge
Mr Andrew Jordan, Senior Immigration Judge

Between:

APPELLANT

and

The Secretary of State for the Home Department
RESPONDENT

For the Appellant: Mr S. Chelvan, counsel, instructed by South West Law. solicitors
For the Respondent: Mr M. Blundell, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Secretary of State sought, and was granted, permission to pursue a reconsideration of a decision made by an Immigration Judge. On reflection, the Home Office properly decided to pursue the reconsideration no longer. Under the scheme that governed the procedure in the Immigration Appeal Tribunal, the Secretary of State was permitted to appeal against an adverse decision made by an Adjudicator and, if granted leave to do so, was an appellant. In that capacity, the Rules provided him a right to withdraw his appeal where he chose to do so. If there was sufficient time to do so before the hearing, this was a commendable means of avoiding unnecessary costs.
2. Under the Asylum and Immigration Tribunal, the Rules do not

permit the Secretary of State to withdraw once reconsideration has been permitted. This is the effect of Rule 17 of the Asylum and Immigration Tribunal (Procedure) Rules 2005:

> **Withdrawal of appeal**
> 17 (1) An appellant may withdraw an appeal –
>
> (a) orally, at a hearing; or
> (b) at any time, by filing written notice with the Tribunal.

3. An appellant is defined in Rule 2 as a person who has given notice of appeal to the Tribunal against the relevant decision in accordance with the Rules. The relevant decision is that of, amongst other people, the Secretary of State or an Entry Clearance Officer; it is not the decision of an Immigration Judge. No longer, therefore, can the Secretary of State feature as an appellant. This is made clear by the definition of respondent which means the decision maker specified in the notice of decision against which a notice of appeal has been given.
4. The position is made even clearer by the terms of Rule 17 (2):

> 17 (2) An appeal shall be treated as withdrawn if the respondent notifies the Tribunal that the decision (or, where the appeal relates to more than one decision, all of the decisions) to which the appeal relates has been withdrawn.

The respondent is here restricted to the person who has made the relevant immigration decision. The Secretary of State may decide to withdraw the *decision* in which case the appellant's appeal is deemed to have been withdrawn. There will, however, be cases where the Secretary of State decides not to withdraw the decision. In particular, in cases where the withdrawal of the decision deprives an appellant of his ability to reap the benefits of an Immigration Judge's findings in his favour, it is possible that the High Court may not permit him to do so. In the present case, Mr Blundell, who appears on behalf of the Secretary of State does not seek to withdraw the decision but simply no longer wishes to pursue his challenge to the Immigration Judge's decision, at least on the basis on which permission was granted.

5. In the present reconsideration, there was insufficient time to prevent the hearing. Mr Blundell has not sought to pursue his grounds of application and, in the absence of any challenge to the Immigration Judge's determination, the Tribunal is bound to find that the original Tribunal did not make a material error of law and the original determination of the appeal shall stand. This is the decision that we make.
6. Mr Blundell, however, sought guidance from the Tribunal as to the procedure to be followed where the Secretary of State makes an earlier decision no longer to pursue the appeal but is unable to follow the former practice of withdrawing his, the Secretary of

State's, the appeal. It is, of course, highly desirable to avoid incurring unnecessary legal expenses. It seems to us that the appropriate course is for the Home Office to write to the Tribunal at Field House indicating that the Secretary of State will no longer pursue the reconsideration hearing. A copy of the letter should be served upon the appellant or his representative in order to prevent further costs being incurred and in order to alert them to the proposed course of action. This letter can then be placed before a Senior Immigration Judge with the expectation that he will determine the appeal without a hearing in accordance with Rule 15 (2). This permits the Tribunal to do so where all the parties to the appeal consent. The Tribunal will, of course, infer that the appellant consents to the Secretary of State no longer maintaining his challenge to the Judge's decision in his, the appellant's, favour. This will not avoid the necessity of compliance with Rule 22 (1) which requires the Tribunal to serve on every party a written determination containing its decision and the reasons for it. The determination, however, will simply recite the letter from the Home Office containing the invitation by the Secretary of State to determine the appeal without a hearing by a decision to the effect that the original Tribunal made no material error of law and its determination shall, therefore, stand.

DECISION

The original Tribunal did not make a material error of law and the original determination of the appeal shall stand.

ANDREW JORDAN
SENIOR IMMIGRATION JUDGE