

Representation:

Mr D Warburton of counsel, instructed by the I A S Tribunal Unit, for the appellant; Mr D W Saville, a Home Office Presenting Officer, for the respondent.

DETERMINATION AND REASONS

1 . The appellants, citizens of Rwanda, appeal with leave of the Tribunal against the decision of an Adjudicator, Mr J R Devittie, who in a determination promulgated on 5th March 2003 dismissed their appeals against the decision of t he respondent, made o n 31st October 2001, to issue directions for t heir removal from the United Kingdom following a refusal of asylum.

2. Leave to appeal to the Tribunal on the basis of an assertion that "At the end of the hearing the Adjudicator stated he would allow the appeal". In the event, he dismissed it. Mr Warburton handed us a manuscript note made by the appellants' representative at the hearing, stating "Adjud - Appeal allowed will send decision within 8 weeks." We had in fact Mrs Ghai's witness *statement dated 21st July 2003 to the same effect. Mr Saville confirmed that* the respondent's representative at the hearing had made a similar note on the Home Office file.

3. It is accordingly clear that the adjudicator announced to the parties that he would be allowing the appeal but proceeded to issue a determination dismissing it. In accordance with the decision of Harrison J in **Mohammed Bashir** (CO-4643-98), the proper course in such cases is to remit the appeal for rehearing. Mr Warburton told us that subject to the Tribunal's views, he and Mr Saville were in agreement that thi 'was the appropriate method of disposal.

4. What happened in this case was unfortunate, to say the least. As pointed out in **Mohammed Bashir**, adjudicators should not announce their decisions after the hearing unless "confident that it will be reflected in [the] written notice of determination. Only in exceptional circumstances should there be any need to diverge from the decision announced at the end of the hearing. If the ... adjudicator

does perceive any need to change his oral decision, it would normally be necessary, in the interests of natural justice, for him to invite the parties to make further representations before coming to his final determination". That did not happen in the present case.

5. For these reasons we allow this appeal to the extent that it is remitted for hearing afresh by an adjudicator other than Mr J R Devittie.

His Honour Judge G Risius CB
Chairman

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