

To [REDACTED]

Web: [www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk)

By email to: [REDACTED]

Date : 3 November 2011

Ref: FOI 20250

Dear [REDACTED]

Thank you for your e-mail of 6 October 2011 in which you ask for information on the statement made by the Home Secretary at the Conservative Party conference on 4 October 2011.

You have specifically asked for information on three immigration appeal cases referred to by the Home Secretary in her statement.

For ease of reference, I have listed your questions below:

### Question 1

In relation to the first and second cases you have asked the following:

- a. *What was the Home Office decision in each case, i.e., was it a decision to deport, a deportation order, a decision to remove as an illegal entrant, a decision to remove as an overstayer or some other decision?*
- b. *Did the person concerned appeal the decision to the Asylum and Immigration Tribunal (AIT) or First-Tier Tribunal (FTT)?*
- c. *If so:*
  - i. *on what date did the AIT/FTT issue their decision on the appeal?*
  - ii. *What was the initial appeal decision on the case and, if it was allowed, on what grounds under section 84(1) of the Nationality, Immigration and Asylum Act 2002 (NIA)?*
  - iii. *Was there an application for reconsideration by the AIT or application for permission to appeal to the Upper Tribunal (UT), if so, by whom (appellant or Secretary of State (SoS)) and with what result?*
  - iv. *Where reconsideration was ordered or permission to appeal was granted, what was the date and decision on reconsideration / appeal by the AIT / UT and, if it was allowed, on what grounds under section 84(1) of the NIA?*

v. *Did either party (and if so whom) apply for permission to appeal to the Court of Appeal (CA) and, if so, with what result?*

vi. *Where permission to appeal to the CA was ordered, what was the date of the CA decision on the appeal and what was the result?*

vii. *If, in a case in which the AIT/FTT/UT had allowed the immigrant's appeal, the UKBA did not then apply for reconsideration of / permission to appeal from that decision, the reason why the SoS decided not to make that application. In particular, please say whether the SoS accepted that the tribunal had not made an error of law.*

d. *If any decisions were made on reconsideration or by the UT, please provide me with the AIT/UT reference number for the case and the exact date of promulgation.*

e. *If any decisions were made by the Court of Appeal, please provide me with the Court of Appeal reference number and any neutral citation number.*

## **Question two**

In relation to the third case you have asked the following:

*Was Senior Immigration Judge Gleeson correct to state (in paragraph 6) that the SoS accepted that any error of law in the determination of the immigration judge was immaterial because the SoS had failed to apply his own guidance on the application of DP/396 to the case?*

Your request has been handled as a request for information under the Freedom of Information Act 2000. Our response is provided below:

## **Response to Q.1**

### **Case 1**

The Upper Tier Appeal Determination of the first case has been made publicly available by the Immigration and Asylum Chamber (IAC). You can access the determination by following the link below. As the determination has been published, I am able to disclose the information that you have requested set out as Annex A.

<http://www.ait.gov.uk/Public/unreportedResults.aspx>

I have also provided a copy of the determination attached as Annex B

### **Case 2**

I can confirm that UKBA hold the data that you have requested on the second case, however, I am unable to disclose the information you have requested. This is because the appeal is still ongoing.

Whilst UKBA hold appeal data, the IAC own all appeal related information. It is the decision of the IAC as to whether the determination relating to an appeal case can be placed in the public domain. The decision to publish an appeal determination is made

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by the IAC after the appeal has reached conclusion. As the appeal is still ongoing I am unable to disclose this information to you.

If you still require this information, I would suggest that you refer your request regarding the second case to the IAC directly.

You can contact the IAC through the Ministry of Justice website to make a Freedom of Information request via the link provided below:

<http://www.justice.gov.uk/global/foi-requests/index.htm>

## **Response to Q.2**

### **Case 3**

Senior Immigration Judge Gleeson was correct to state this.

At Paragraph 6 of her determination, SIJ Gleeson stated that the SSHD: "...accepted that any error in the determination was immaterial. Had the transitional provisions been properly applied, the Immigration Judge would have been entitled to allow the appeal under DP3/96 as he had in fact done."

I hope you find this information useful. I would like to assure that I have provided all the information that the Home Office hold and is able to release in relation to your request.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to the address below, quoting reference 19528. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

Information Access Team  
Home Office  
Ground Floor, Seacole Building  
2 Marsham Street  
London SW1P 4DF  
E-mail: [FOIRequests@homeoffice.gsi.gov.uk](mailto:FOIRequests@homeoffice.gsi.gov.uk)

As part of any internal review the Department's handling of your information request will be reassessed by staff who were not involved in providing you with this response. If you remain dissatisfied after this internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

Yours sincerely

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Mrs Isra Hussain  
Freedom of Information Team  
UKBA

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