R (on the application of Bilal Mahmood) v Secretary of State for the home Department (continuing duty to reassess) IJR [2014] UKUT 00439 (IAC)

In the Upper Tribunal
Immigration and Asylum Chamber

In the matter of an application for judicial review

The Queen on the application of Bilal Mahmood

v

Secretary of State for the Home Department

(1) The lodgement of permission and/or interim relief papers in a judicial review application is a beginning, not an end.

(2) If an application for permission is overtaken by supervening events or is otherwise rendered moot, there is a duty on the Applicant's solicitors to take appropriate and immediate action. This will include proactively communicating with this Chamber and the Respondent's representatives.

(3) From the inception of the proceedings and in particular following receipt of the Respondent's Acknowledgement of Service, there is a duty on every Applicant's legal representatives to conscientiously reassess the viability and propriety of their client's application for judicial review and to consider whether any further procedural step is required. If the Acknowledgement of Service renders the challenge unsustainable, appropriate withdrawal steps must be initiated promptly.

(4) Unjustifiable delays in the finalising and execution of proposed consent orders and lack of communication with the Upper Tribunal in this context are unacceptable.

Application for permission to bring judicial review proceedings

Following consideration of the documents lodged by the Applicant and the Respondent's Acknowledgment of Service

Decision of The President, the Honourable Mr Justice McCloskey

The application for permission is hereby refused.

The Challenge

1. This is another of the currently plentiful crop of *soi-disant* "ETS" judicial review cases. These have gained much currency during recent months, stimulated by action taken on behalf of the Secretary of State for the Home Department (*"the Secretary of State"*), the Respondent herein, in the wake of the BBC "Panorama" programme broadcast on 10

February 2014. "ETS" denotes Educational Testing Services, a global agency contracted to provide certain educational testing and assessment services to the Secretary of State. In order to secure leave to remain in the United Kingdom, by virtue of the relevant provisions of the Immigration Rules it was incumbent on the Applicant to provide evidence that he had obtained a specified type of English language qualification. The action taken on behalf of the Secretary of State, which the Applicant challenges by these proceedings, was based on an assessment that the English language certificate on which he relied had been procured by deception.

2. The Applicant challenges the Secretary of State's threefold inter-related decisions dated 08 May 2014 and 12 May 2014 respectively, to refuse him leave to remain, to remove him from the United Kingdom and to give directions for his removal. These decisions are expressed to be based on the Applicant's alleged deception:

> "*You are specifically considered a person who has sought leave to remain in the United Kingdom by deception. Following information provided to us by ……. ETS …… that on 23 October 2013 an anomaly with your speaking test indicated the presence of a proxy test taker*".

On 16 May 2014, the Applicant was granted interim relief in the form of an order restraining the Secretary of State from removing him from the United Kingdom. At that stage, none of the Respondent's evidence was available. A substantial volume of additional material evidence has now been provided via the Respondent's Acknowledgement of Service.

Arguable Merits

3. The Applicant's case is, firstly, that, as a matter of fact, the Respondent provided him with 60 days leave within which to make a further application (presumably for leave to remain) and that such application was duly made, with the result that the impugned decisions are *"unfair and unlawful in all the circumstances"*. No particulars of the alleged unfairness or illegality are provided. Secondly, it is contended that the failure to afford the Applicant a period of 60 days within which to obtain a new CAS from a different sponsor and to have his leave varied is at variance with the Respondent's policy. Thirdly, there is a complaint that deception has not been established by the Respondent to the requisite standard: notably, this ground is based on the non-provision of the supporting evidence. Finally, there is a brief and unparticularised complaint that the Applicant's rights under Article 8 ECHR have been violated.

4. The Respondent's evidence is to the effect that the Applicant's English language qualification was secured as a result of the relevant test having been attended and taken by a person other than the Applicant, described in this series of cases as a "proxy", with the result that the Applicant secured the certificate by deception. This evidence contains the outworkings of the case made summarily in the texts of the impugned decisions. A period of some six weeks elapsed between the initiation of these proceedings and the provision of the Acknowledgement of Service. A further period of around ten weeks has elapsed since the latter event. Nothing further has been received from the Applicant's legal representatives

5. In this particular case, a significant feature of the conjoined applications for permission and interim relief was the Applicant's professed inability, due to (it was said) being in custody, to provide certain material documents, in particular an alleged letter from the Respondent of February 2014 (of unspecified date) to the effect that the Applicant "……*would be given 60 days to submit a fresh application*" **and** the "*fresh application*" allegedly made by the Applicant in March 2014. It was stated in Form T480, the Claim Form, that these materials would be forthcoming. However, some four months later, they have not been provided. On the working assumption – which is rebuttable – that the Respondent's Acknowledgement of Service and attachments are accurate and comprehensive, it appears that these materials do not exist. Applications for permission are determined on evidence, both visible and reasonably inferred. There is a clear onus on the Applicant to provide all material documents in his possession, custody or power.

I determine this application on the basis that the materials alleged by him in his application to exist are either non-existent or irrelevant.

6. The analysis immediately above operates to dispose of the first of the Applicant's grounds. At this remove, some four months after the initiation of these proceedings, the Applicant has failed to provide the documents underpinning his two key assertions. Furthermore, they do not form part of the materials lodged by the Respondent with the Acknowledgement of Service. There is no basis for inferring, even to the level of arguability, that these documents exist. Thus the first ground has no substance. It has no merit in any event having regard to the statutory framework within which the key decision, the first, was made. This was a decision to refuse the Applicant's application for leave to remain in the United Kingdom on the ground that he had practised deception, under paragraph 322 (1A) of the Immigration Rules, which states unequivocally that where this has occurred, leave to remain is to be refused. I consider that, in tandem, the existence of this power and the decision to exercise it on the basis of the evidence proffered constitute, by some measure, the most important legal consideration in the matrix under scrutiny.

7. The second of the Applicant's grounds falls in tandem with the first, since it is based on the existence of alleged documentary evidence which has not been provided: see my analysis in [5] and my assessment of the first ground in [6]. I consider that the policy invoked has no function in a deception case of this kind. Furthermore, and in any event, there is nothing in the policy document which purports to relax or dilute the operation and exercise of the legal rule in play viz paragraph 322(1A) of the Immigration Rules (*supra).* I repeat: this is the dominant ingredient in the framework under consideration.

8. The third of the Applicant's grounds, being a complaint that his private life rights under Article 8 ECHR have been infringed, is, in my estimation, nothing more than a makeweight. It is a paradigm example of pure assertion devoid of accompanying particulars **and** without a shred of supporting evidence. All that is disclosed in the grounds is that the Applicant is a citizen of Pakistan, now aged 27 years, who has been in the United Kingdom as a Tier 4 student since 14 December 2011. To describe the evidential basis for the private life which he asserts as threadbare is generous. I consider that this bare and evidentially impoverished ground is distant from the threshold of arguability. Furthermore, it withers to the point of extinction in the wake of the recent decision of the Supreme Court in Patel v Secretary of State for the Home Department [2013] UKSC 72:

> "*It is important to remember that Article 8 is not a general dispensing power. It is to be distinguished from the Secretary of State's discretion to allow leave to remain outside the Rules, which may be unrelated to any protected human right ….*
>
> *One may sympathise with Sedley LJ's call in Pankina for 'common sense' in the application of the Rules to graduates who have been studying in the UK for some years …. However, such considerations do not, by themselves, provide grounds of appeal under Article 8, which is concerned with private or family life, not education as such. The opportunity for a promising student to complete his course in this country, however desirable in general terms, is not in itself a right protected under Article 8.*"
>
> [My emphasis.]

Per Lord Carnwath, at [57].

9. The evidence is entirely one-sided, in the Respondent's favour. Considered in its totality, I conclude that the Applicant fails to establish an arguable case. He has failed to engage meaningfully with the key passage in the impugned decisions (cited above) and has sought to rely on phantom evidence. His diffuse and inadequately particularised grounds of challenge airbrush the statutory framework and are

unsupported by evidence. This challenge fall measurably short of the threshold of arguability.

Alternative Remedy

10. There is a more fundamental obstacle confronting the Applicant's judicial review challenge. This reposes in the long standing principle that judicial review is a remedy of last resort. This has a particular resonance in the field of immigration law, where specified decisions can be challenged by appeal to the First-tier Tribunal (Immigration and Asylum Chamber*) ("FtT").* The pursuit of some of these appeals is restricted to "out of country". All of this is governed by legislation. The operation of the "last resort" principle in the sphere of immigration law has been affirmed in resounding terms in the binding decisions of the Court of Appeal in R (Lim) v SSHD [2007] EWCA 773, at [24] especially and RK (Nepal) v SSHD [2009] EWCA Civ 359, at [33] especially. The most recent noteworthy contributions to this stream of jurisprudence include the decision of the Administrative Court in R (Khan) v Secretary of State for the Home Department [2014] EWHC 2494 and that of the UTIAC in Mohammad Bilal Jan v SSHD [2014] UKUT 265 (IAC).

11. The effect of the decisions mentioned above is to affirm the application to the field of immigration law, in its full vigour, of a venerable principle of public law. This principle was articulated in uncompromising language by Sir John Donaldson MR in R v Epping and Harlow General Commissioners, ex parte Goldstraw [1983] 3 All ER 257, at 262:

> "….. *It is a cardinal principle that, save in the most exceptional circumstances, jurisdiction* [in judicial review] *will not be exercised where other remedies were available and have not been used*".

Soon afterwards, the House of Lords promulgated the same principle, in equally strong terms:

> "*Judicial review is a collateral challenge; it is not an appeal. Where Parliament has provided by statute appeal procedures, as in the taxing statutes, it will only be very rarely that the Courts will allow the collateral process of judicial review to be used to attack an appealable decision.*"

See Preston v IRC [1985] AC 835, at 852 per Lord Scarman. It has been observed that during the two decades which followed, the trend of modern authority reflected a greater readiness to consider the balance of cost and convenience between an application for judicial review and resort to an alternative remedy: see the discussion in Re Ballyedmond's Application [2000] NI 174, at 178H, per Carswell LCJ. However, in Lim and the other decisions noted above, the pendulum appears to have swung firmly in favour of the potent formulations of principle contained in Goldstraw and Preston. This trend seems attributable to the detectable shifts in modern litigation culture which have occurred during recent years, the associated procedural reforms and the increasing prominence of the overriding objective. These more recent decisions, notwithstanding, remain faithful to the dogma which has consistently underpinned the availability of judicial review as a remedy for the misuse of public power. They do so by acknowledging the further, sister principle that while the remedy of judicial review is still available, in principle, even where a statutory right of appeal is provided, this is so only where the test of "*special or exceptional factors*" is satisfied

12. Under section 82 of the Nationality Immigration and Asylum Act 2002 (the *"2002 Act"*), a right of appeal to the FtT lies against an *"immigration decision",* as defined*.* As regards the decisions which the Applicant seeks to challenge in these proceedings, my analysis is as follows:

    (i) The first of the impugned decisions, whereby the Applicant's application for leave to remain in the United Kingdom was refused, does not attract a statutory right of appeal.

It is worth noting that in this type of case a decision to invalidate the subject's leave to remain, under section 10 of the Immigration and Asylum Act 1999 (the *"1999 Act"*), is another possibility. Pursuant to this provision, an Immigration Officer is empowered to give directions for the removal of a person who is not a British citizen from the United Kingdom if, *inter alia*, the subject *"……. uses deception in seeking (whether successfully or not) leave to remain"*. Section 10(8) provides:

> *"When a person is notified that a decision has been made to remove him in accordance with this section, the notification invalidates any leave to enter or remain in the United Kingdom previously given to him".*

[Inserted by the Immigration, Asylum and Nationality Act 2006, section 48]. An invalidation of leave to remain notification under section 10 of the 1999 Act is not an appealable immigration decision under section 82 of the 2002 Act

(ii) The Applicant challenges, secondly, the Respondent's decision to remove him from the United Kingdom. By virtue of section 82(2) (g) of the 2002 Act, this species of removal decision is appealable. However, by reason of the dichotomy of "in country" and "out of country" appeals established by section 92, this appeal may not be pursued while the person is in the United Kingdom. Accordingly, for this Applicant, the remedy provided by statute is a so-called "out of country" appeal to the FtT.

(iii) There is a clear distinction in section 82 between a decision to remove a person from the United Kingdom and the consequential, or linked, making of removal directions. The effect of this distinction is that removal directions do not attract a right of appeal. This applies to the third limb of the Applicant's challenge (*supra*).

Accordingly, to summarise, the Applicant has available to him the statutory remedy of an out of country appeal to the FtT against the Respondent's decision to remove him from the United Kingdom.

13. The above analysis and the conclusion it yields, namely that the Applicant can pursue an out of country appeal, do not lead inexorably to the conclusion that permission must be refused. This is so because, as acknowledged above, the effect of the relevant jurisprudence is that an application for judicial review of an appealable immigration decision lies where the test of special or exceptional factors is satisfied. The Upper Tribunal is required by the doctrine of precedent to give effect to the binding authority of the Court of Appeal decisions noted above. Thus the out of county appeal available to the Applicant is, presumptively, an adequate alternative remedy. The displacement of this presumption will, in any given case, require suitable evidence. There is none in the instant case. No special or exceptional factors have been identified. Thus the operation of this strong general principle in the present context points unmistakably to a refusal of permission.

14. For completeness, I would add that section 1 of the Immigration Act 2014, not yet in operation, will substitute section 10 of the 1999 Act, without preserving section 10(8). The latter will be rendered otiose by a combination of paragraphs 322 and 323 of the Immigration Rules, as amended, when these come fully into operation, which will occur when section 1 of the 2014 Act is commenced. The current position is that paragraph 323(ia) is not yet operative. The remainder of paragraphs 322 and 323 came into operation on 06 April 2014.

Duty of Candour and Misuse of Process

15. In the contemporary era, which is characterised by voluminous judicial workloads, the overriding objective and the constant battle against the unholy trinity of avoidable delay, excessive cost and unnecessary complexity, a hallowed principle is sometimes overlooked. This principle takes the form of a requirement of long standing that in every

application for judicial review there is a duty of candour on the Applicant. While this applies throughout the proceedings, it is of particular importance at the permission stage. Formerly, permission applications were made *ex parte*. As a result of modern reforms, they now proceed on an *inter-partes* basis, according to a procedure which should normally ensure that the Court is alerted to the substance of the Respondent's case and the most important documentary evidence. It may be that these procedural reforms have resulted in decreasing emphasis on, and attention, to the Applicant's duty of candour, which is owed to the Court or Tribunal concerned. However, I take this opportunity to emphasise that this duty continues to apply with full vigour at all stages of judicial review proceedings in the Upper Tribunal (Immigration and Asylum Chamber). All practitioners providing professional services in this field must familiarise themselves with the existence and content of this duty and give full effect thereto.

16. In R (I) v Secretary of State for the Home Department [2007] EWHC 3103 (Admin), a renewed claim for judicial review, Collins J observed, at [8]:

> "*……. it was not until the Acknowledgement of Service that the full history was disclosed. It is essential that those who bring judicial review proceedings appreciate that there is a duty of candour.* ***That means that they must put before the Judge all relevant material and in particular any material which may be adverse, or may appear to be adverse. They must not leave the situation that the Judge does not have the full picture in order to make the relevant decision***"

[My emphasis.]

His Lordship added the following stern warning, which I gratefully adopt in full, at [10]:

> "*I make it clear that there is ample authority which indicates that the Court is entitled to, and will in certain cases, refuse permission purely on the basis of such a breach. Whether or not there might be an arguable claim, …….* [this] *can result in a refusal of permission.*"

And at [11]:

> "*Furthermore, it is a breach of the obligation of the solicitors and Counsel if there has been a failure to include material which is relevant and particularly if that material is or may be adverse to the claimant. If such a breach occurs, it is open to the Court, and the Court will have no hesitation in so doing, to make an order that the solicitors in question, and possibly Counsel if Counsel is also shown to have been in breach of his duty, pay the costs incurred by the Secretary of State in producing an Acknowledgement of Service personally and ……. possibly the oral renewal as well.*"

Practitioners should take note that this approach applies fully in judicial review proceedings in this Chamber.

17. The exalted importance of every litigant's duty of candour to the Court or Tribunal concerned is properly appreciated when the duty is juxtaposed with the concept of abuse of the process of the Court or Tribunal. I consider that, properly analysed, a breach of this duty will normally be tantamount to a misuse of the Tribunal's process. It is appropriate to add that the duty is not, of course, unilateral. It is, rather, bilateral in nature, applying fully to all parties to the proceedings. As regards Respondents, this has been long recognised. In R v Lancashire County Court, ex parte Huddelston [1986] 2 All ER 941, Sir John Donaldson MR observed, at p 4:

> "*Certainly it is for the applicant to satisfy the Court of his entitlement to judicial review and it is for the respondent to resist his application, if it considers it to be unjustified.* ***But it is a process which falls to be conducted with all the cards face upwards on the table and the vast majority of the cards will start in the authority's hands.***"

[Emphasis added.]

The duty imposed upon judicial review Respondents has been recognised at the highest judicial levels. A single quotation suffices:

"*And it is a well established principle that once permission to bring a claim for judicial review has been given public authorities are under a duty of candour to lay before the Court all the relevant facts and reasoning underlying the decision under challenge.*"

See Tweed v Parades Commission (Northern Ireland) [2006] UKHL 33, at [54]. I add, with due deference to Lord Brown, the qualification that this duty applies fully at the Acknowledgment of Service stage also.

18. The procedural regime applicable to judicial review proceedings in this Chamber is contained in the Tribunal Procedure (Upper Tribunal) Rules 2008 ("*the 2008 Rules*"), as amended. Given the issues addressed in this decision, Parties and their representatives should be cognisant of the following provisions in particular:

(a) The overriding objective: it is no coincidence that this occupies a position of supremity at the apex of the regime, in rule 2.

(b) The Upper Tribunal's case management powers, enshrined in rule 5. These include powers to extend time and to require a party to provide documents, information, evidence or submissions.

(c) The procedure for applying to the Upper Tribunal for directions and the Tribunal's power to make a direction on its own initiative, contained in rule 6.

(d) The powers available to the Upper Tribunal in the event of a party failing to comply with a requirement of the Rules, a Practice Direction or a specific case management direction. These include ordering the relevant failure to be remedied and striking out a party's case: see rules 7 and 8.

(e) The specific requirements governing applications for permission to bring judicial review proceedings, enshrined in rule 28. These include, per rule 28(4) (g), a requirement to lay out **the facts**. This means **all material facts**. There is a further specific requirement to include with the application copies of the decision under challenge and any other documents in the Applicant's possession or control on which he intends to rely: per rule 28(6).

The provisions of the 2008 Rules highlighted above contain a variety of mechanisms which can be invoked to remedy omissions or shortcomings in papers lodged by a judicial review applicant at the interim relief or permission stage. Furthermore, none of these provisions, in particular Rule 28, should be viewed as diminishing in any way the Applicant's duty of candor to the Tribunal.

19. True it is that there is no specific provision requiring the inclusion of a witness statement of the Applicant or any other person. Prior to the introduction of the Civil Procedure Rules, it was the practice for every judicial review Applicant, or Claimant, to swear an affidavit or make a witness statement which would be included with the permission papers. However, this is no longer required in the Administrative Court: see Practice Direction 54A, paragraph 5.7. whereof lists the documents which must accompany the Claim Form. It has been suggested that these do not include a witness statement or affidavit on the part of the Applicant because the Claim Form was amended to include a statement of truth: see Judicial Review, A Practical Guide (Southey), second edition, page 148. Unsurprisingly, the authors acknowledge that a witness statement or affidavit will be necessary in certain cases. However, the reality of practice in this jurisdiction during recent years appears to be that a witness statement, or affidavit, of the Applicant has become something of a rarity. This is unfortunate, as I consider it

indispensable in certain cases. Furthermore, it is to be lamented that the salutary discipline of the Applicant having to swear an affidavit or execute a witness statement seems to be responsible for some laxity in standards in certain cases. At this remove, some may question the wisdom of this discrete reform.

20. Undeniably, a comprehensive witness statement, addressing all material issues and attaching all available relevant documents, signed by the Applicant, will be required in certain judicial review cases in UTIAC. The need for this will be dictated by a combination of the particular context, the Applicant's duty of candour to the Upper Tribunal, good practice and the overriding objective. In practice, the reality is that the completed Judicial Review Form, supporting grounds and any accompanying documentary materials frequently fail to set forth all material facts and omit relevant documentary evidence.. Furthermore, at the initial stage of the proceedings, there is no scope for facts to be agreed *inter partes*. It is not possible to attempt any exhaustive prescription. However, it is self evident that where the Applicant's case relies on alleged facts which are not documented in the papers – such as conversations or dates of receipt of documents or verbal assurances or promises allegedly given, or facts which have previously been disputed by the Respondent - these will have to be fully addressed in a carefully composed witness statement. In the examples given, the evidence will be incomplete and the Applicant's duty of candour owed to the Tribunal will not be fulfilled without a thorough and candid witness statement. Observance of this discipline in those cases where it is appropriate will further the ends of justice and, if the statement is truthful, accurate and comprehensive, will avoid misusing the process of the Upper Tribunal. This requirement, where it arises, is not dependent on any procedural rule or judicial case management direction.

21. There is no specific rule dealing with the provision of witness statements or supplementary documentary evidence following lodgement of the permission and/or interim relief papers. However, as highlighted above, the 2008 Rules make ample provision for rectifying initial shortcomings and omissions of this *genre*. While recourse to these particular provisions should be the exception, rather than the rule, the Upper Tribunal recognises that, in a small number of cases, there may be legitimate reasons for initiating proceedings by the lodgement of papers which omit necessary witness statements and/or relevant documentary materials.

22. I consider the present case to be a clear illustration of one in which the Upper Tribunal should have received a comprehensive witness statement from the Applicant at the permission or interim relief stage or, if genuinely not feasible, as soon thereafter as possible. I would have expected the Applicant, at the permission or interim relief stage, to have addressed comprehensively in a witness statement two key factual issues which the papers lodged do not address. The first relates to the taking of the English language test. The second concerns the important documents allegedly in his custody which, it was said, could not be included with the interim relief/ permission papers as the Applicant, being in detention, could not access them. In the abstract, there was much to be said on both of these issues and the only mechanism for doing so was a thorough witness statement. I consider that in the circumstances of this case, this was dictated by the all pervasive duty of candour and elementary good practice. I repeat that this requirement was not dependent on any rule of procedure or judicial case management direction.

23. Generally, in every case the Applicant's legal representatives must act proactively at every stage. Thus where, for legitimate reasons, it is not possible to include with the permission or interim relief papers such a witness statement or, indeed, any relevant material, this should be proactively addressed and adequately explained. There can be no excuse for failing to do so since the Judicial Review Claim Form makes explicit provision for this, in section 9. Since the duty of candour endures from the beginning to the end of the proceedings, any genuine inability to provide such a witness statement or any relevant information or any material documents must be continually addressed, assessed and reassessed by the representatives concerned. Taking into account normal timescales, it is difficult to conceive of any case where a continuing failure of this nature which endures beyond receipt of the Respondent's Acknowledgement of Service

will be justifiable. Resort to the mechanisms provided by the provisions of the 2008 Rules highlighted in [15] above must be had where necessary.

24. Where there is a failure to discharge the Applicant's duty of candour to the Upper Tribunal, the consequences may include, inexhaustively, the following:

(a) A refusal to grant permission.

(b) Linked to (a), a conclusion that the process of the Upper Tribunal has been misused.

(c) Adverse costs implications, which may extend to the practitioners concerned.

(d) The convening of a "Hamid" hearing: see R (Hamid) v Secretary of State for the Home Department, [2012] EWCH Civ 3070 (Admin).

(e) The referral of practitioners to the appropriate professional body.

Practitioners must also be alert to the recent decision of the Upper Tribunal in Okondu & Abdussalam v Secretary of State for the Home Department [2014] UKUT 371 (IAC). This cautions, firstly, that the Upper Tribunal is empowered to make wasted costs orders and, secondly, that this Tribunal will make reports to the Solicitors Regulation Authority where considered appropriate. Thirdly, this decision underlines the precept that the overriding duty of all representatives is owed to the Court or Tribunal concerned and not the client. I would add that the solemn nature of this duty cannot be over - emphasised.

25. In the present case, the following signal failings occurred:

(a) In the application for permission, it was represented that certain important documents were in existence but could not be provided at that time. These were not provided subsequently at any stage and no attempt was made to furnish an explanation for this failure.

(b) No statement of evidence of the Applicant was provided at the permission stage or at any stage subsequently. This issue has not been addressed, proactively or at all and no explanation has been proffered by the Applicant's representatives.

(c) The provision of the Acknowledgement of Service has not stimulated any attempt to rectify the above failings, which are now of some four months vintage.

(d) There was a failure by the Applicant's solicitors to rectify these shortcomings by resort to the relevant provisions of the 2008 Rules.

In the particular circumstances of this case, I consider these failings, individually and collectively, unacceptable, subject to some compelling explanation or justification. Steps will be taken to require the representatives concerned to provide a detailed explanation and a Hamid hearing may be convened in early course.

26. Finally, I take the opportunity to emphasise the following:

(a) The lodgement of permission and/or interim relief papers is a beginning, not an end.

(b) If an application for permission is overtaken by supervening events or is otherwise rendered moot, there is a duty on the Applicant's solicitors to take appropriate and immediate action. This will include proactively communicating with this Chamber and the Respondent's representatives.

(c) From the inception of the proceedings and in particular following receipt of the Respondent's Acknowledgement of Service, there is a duty on every Applicant's

legal representatives to conscientiously reassess the viability and propriety of their client's application for judicial review and to consider whether any further procedural step is required. If the Acknowledgement of Service renders the challenge unsustainable, appropriate withdrawal steps must be initiated promptly.

(d) Unjustifiable delays in the finalising and execution of proposed consent orders and lack of communication with the Upper Tribunal in this context are unacceptable.

I sincerely trust that, henceforth, the impression that in many cases the Respondent's Acknowledgement of Service is not considered, properly or at all, by the Applicant's legal representatives will be quickly dispelled.

Order

27. I order as follows:

I. For the reasons elaborated above, this application for permission is refused.

II. The interim relief order dated 16 May 2014 is hereby discharged.

III. Any request under rule 30 of the Tribunal Procedure (Upper Tribunal) Rules 2008 for this decision to be reconsidered at a hearing will be made within **seven** days of the date this decision is sent

IV. The making of any such request will not, without further order, operate as a bar to removal of the Applicant from the United Kingdom.

Costs

28. I have derived much assistance from the Respondent's Acknowledgement of Service and am minded to order that the Applicant pay the Respondent's claimed costs of £320.00, subject to any representations in writing to be received within **ten** days of the date of sending hereof.

Direction

29. The Applicant's solicitors will address the concerns expressed and failures identified in this judgment in writing, within **seven** days of the date of sending this order. Their response will be addressed to the President of the Upper Tribunal, Immigration and Asylum Chamber and copied to the Respondent's legal representative.

Signed:

The Honourable Mr Justice McCloskey
President of the Upper Tribunal, Immigration and Asylum Chamber