
**Upper Tribunal**
**(Immigration and Asylum Chamber)**

Adamally and Jaferi (section 47 removal decisions: Tribunal Procedures) [2012] UKUT 00414 (IAC)

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Determination Promulgated** |
|---|---|
| **On 8 October 2012** | ..... |

**Before**

**Mr C M G Ockelton, Vice President**

**Upper Tribunal Judge Hanson**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MUNIRA QURAISH SAJAD HUSSAIN ADAMALLY**

**SHAIQEEN AHMED JAFERI**

Respondent

**Representation :**

For the Appellant: Mr Melvin, Senior Home Office Presenting Officer

For the Respondent: Mr Z Malik instructed by Malik Law Chambers for Mrs Adamally

Mr A Jafar instructed by Lee Valley Solicitors for Mr Jaferi

When a removal decision purportedly under s 47 of the Immigration, Asylum and Nationality Act 2006 is made concurrently with a decision refusing further leave:

(i) the s 47 decision is unlawful, but

(ii) the decision refusing leave is a separate decision, that

(iii) requires determination;

(iv) s 85(1) of the Nationality, Immigration and Asylum Act 2002 brings the two decisions into one appeal, but

(v) s 86 of that Act allows and requires the determination to reflect differences in outcome.

**DETERMINATION AND REASONS**

1.

What should a Tribunal Judge do when faced with a single piece of paper on which is both a decision refusing a person further leave to remain and a decision that the person should be removed? That question forms the latest part in a long-running jurisprudential saga. We shall begin by setting out the relevant legislation, and summarising the story so far.

**Legislation**

2.
The relevant provisions are as follows.

In the Immigration Act 1971:

“3 C Continuation of leave pending variation decision

(1) This section applies if –

(a) a person who has limited leave to enter or remain in the United Kingdom applies to the Secretary of State for variation of the leave,

(b) the application for variation is made before the leave expires, and

(c) the leave expires without the application for variation having been decided.

(2) The leave is extended by virtue of this section during any period when –

(a) the application for variation is neither decided nor withdrawn

(b) an appeal under section 82(1) of the Nationality, Asylum and Immigration Act 2002 could be brought, while the appellant is in the United Kingdom against the decision on the application for variation (ignoring any possibility of an appeal out of time with permission), or

(c) an appeal under that section against that decision, brought while the appellant is in the United Kingdom, is pending (within the meaning of section 104 of that Act).

(3) Leave extended by virtue of this section shall lapse if the applicant leaves the United Kingdom.

(4) A person may not make an application for variation of his leave to enter or remain in the United Kingdom while that leave is extended by virtue of this section.

(5) But subsection (4) does not prevent the variation of the application mentioned in subsection (1)(a).

(6) The Secretary of State may make regulations determining when an application is decided for the purposes of this section; and the regulations –

(a) may make provision by reference to receipt of a notice,

(b) may provide for a notice to be treated as having been received in specified circumstances,

(c) may make different provision for different purposes or circumstances,

(d) shall be made by statutory instrument, and

(e) shall be subject to annulment in pursuance of a resolution of either House of Parliament. “

Section 3D contains, in the case of a person whose leave has been revoked, provisions parallel to those of section 3C(2)(b) and (c), (3) and (4).

3.
The regulations made under s 3C(6) are the Immigration (Continuation of Leave) (Notices) Regulations 2006 (SI 2170/2006). For present purposes they need to be read with the Immigration (Notices) Regulations 2003 (SI 658/2003). They have the effect that, for the purposes of s 3C, an application is decided only when written notice of the decision, including notice of any appeal rights, is given to the person making the application.

4.
In the Immigration, Asylum and Nationality Act 2006:

"47. Removal: persons with statutorily extended leave

(1) Where a person's leave to enter or remain in the United Kingdom is extended by section 3C(2)(b) or 3D(2)(a) of the Immigration Act 1971 (c.77) (extension pending appeal), the Secretary of State may decide that the person is to be removed from the United Kingdom, in accordance with directions to be given by an immigration officer if and when the leave ends.

(2) Directions under this section may impose any requirements of a kind prescribed for the purpose of section 10 of the Immigration and Asylum Act 1999 (c.33) (removal of persons unlawfully in United Kingdom).

…."

5.
We do not need to set out s 10 of the Immigration and Asylum Act 1999. It permits directions to be given for the removal of persons unlawfully in the United Kingdom. The only relevant provision for present purposes is that directions can be given for the removal of a person who remains beyond the time limited by his leave.

6.
In the Nationality, Immigration and Asylum Act 2002:

"82. Right of appeal: general

(1) Where an immigration decision is made in respect of a person he may appeal to the Tribunal.

(2) In this Part 'immigration decision' means –

…

(d) refusal to vary a person's leave to enter or remain in the United Kingdom if the result of the refusal is that the person has no leave to enter or remain

…

(g) a decision that a person is to be removed from the United Kingdom by way of directions under section 10(1)(a), (b), (ba) or (c) of the Immigration and Asylum Act 1999 (c.33) (removal of person unlawfully in United Kingdom),

(ha) a decision that a person is to be removed from the United Kingdom by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006 (removal: persons with statutorily extended leave)

…

85. Matters to be considered

(1) An appeal under section 82(1) against a decision shall be treated by the Tribunal as including an appeal against any decision in respect of which the appellant has a right of appeal under section 82(1).

(2) If an appellant under section 82(1) makes a statement under section 120, the Tribunal shall consider any matter raised in the statement which constitutes a ground of appeal of a kind listed in section 84(1) against the decision appealed against.

…

86. Determination of appeal

(1) This section applies on an appeal under section 82(1), 83 or 83A.

(2) The Tribunal must determine –

(a) any matter raised as a ground of appeal (whether or not by virtue of section 85(1)), and

(b) any matter which section 85 requires it to consider.

(3) The Tribunal must allow the appeal in so far as it thinks that –

(a) a decision against which the appeal is brought or is treated as being brought was not in accordance with the law (including immigration rules), or

(b) a discretion exercised in making a decision against which the appeal is brought or is treated as being brought should have been exercised differently.

(4) For the purposes of subsection (3) a decision that a person should be removed from the United Kingdom under a provision shall not be regarded as unlawful if it could have been lawfully made by reference to removal under another provision.

(5) In so far as subsection (3) does not apply, the Tribunal shall dismiss the appeal.

(6) Refusal to depart from or to authorise departure from immigration rules is not the exercise of a discretion for the purposes of subsection (3)(b).

7.
The effect of these provisions for present purposes is as follows. A person who has current leave and applies for a variation (that is to say, extension) of it, has a right of appeal to the First-tier Tribunal under s 82(2)(d) if the application is refused. [1] His existing leave is extended by s 3C of the 1971 Act until his appeal is finally determined; or, if he does not appeal, his leave is extended to the end of the period in which he could, without needing an extension of time, have served a notice of appeal. After the end of the period of extension granted by s 3C, unless an appeal was successful, the leave expires, and the person becomes an overstayer, whose removal can be directed under provisions of s 10(1)(a) of the 1999 Act. That decision also carries a right of appeal, under s 82(2)(g). Following the coming into force of s 47 of the 2006 Act, however, the Secretary of State does not have to wait until the person becomes an overstayer, because that section permits a removal decision to be made during the currency of leave. Such a decision also carries a right of appeal under s 82(2)(ha). The existence of separate rights of appeal confirms, if confirmation were needed, that the decisions are separate decisions. Sections 85 and 86 regulate the Tribunal's process in determining appeals.

**The story so far**

8.
In a number of cases, the courts have considered whether, when making a decision that a person's leave is not to be extended, the Secretary of State should also make any relevant decision relating to the person's removal. Before the coming into force of s 47, the answer to that question would appear to be obvious. As the only relevant power to make a removal decision was that in s 10(1)(a), the power could not be exercised during the continuance of leave under s 3C of the 1971 Act, because until the expiry of that leave, the person was not an overstayer. Thus it would appear impossible to make the removal decision at the same time as refusing further leave, because the effect of s 3C is that the person is not an overstayer until the expiry of a period of time which extends beyond the date of the decision on the variation application.

9.
For reasons which have never been entirely clear, it was conceded by Counsel for the Secretary of State in the Court of Appeal in TE (Eritrea) v SSHD [2009] EWCA Civ 174, not only that the Secretary of State could make a s 10 decision in tandem with a decision refusing an in-time application for a variation of leave, but that in the circumstances of that case he should have done so. That concession appears to have been approved by the court. How the Secretary of State could be obliged to make a decision that he could not in law make (that is to say, to direct the removal as an overstayer of a person who had existing leave) has never been explained, as this Tribunal remarked in Kishver [2011] UKUT 00410 (IAC). There is a further problem. A decision to remove an overstayer does not carry an in-country right of appeal unless at the time it is made the subject of it "has made" an asylum or human rights claim (see ss 82(2)(g), 92(2) and (4)). In the usual case the application for further leave relies on the rules; only if it is unsuccessful would human rights be invoked. If by the time the subject had notice of either decision, both had been made, there would be in-country and out-of-country appeals against the two decisions. Nevertheless, the concession, and the consequent decision of the Court of Appeal led to a number of other decisions, some of which, like TE (Eritrea) itself, must now be regarded as of doubtful authority.

10.
The reason for the latter proposition is the decision of the Court of Appeal (Lord Neuberger MR, Hallet LJ and Stanley Burnton LJ) in Patel and others v SSHD [2012] EWCA Civ 741. By the time of that decision, s 47 was in force and the Court held that the word "may" in s 47(1) was genuinely permissive and did not impose any obligation on the Secretary of State. In these circumstances, we regard it as settled at the level of this Tribunal and the First-tier Tribunal that decisions, even of the Court of Appeal, to the contrary effect, including Mirza v SSHD [2011] EWCA Civ 159, and Sapkota v SSHD [2011] EWCA Civ 1320 should not be followed. In his judgment, the Master of the Rolls explains the Court of Appeal's jurisdiction to resolve an irreconcilable conflict in earlier decisions, here exercised by following Lamichhane v SSHD [2012] EWCA Civ 260 in preference to Mirza . Stanley Burnton LJ, agreeing with the Master of the Rolls, summarised the reasons as follows:

"74. I have emphasised the impossibility of imposing a duty on the Secretary of State to issue removal directions because, in the absence of such a duty, it is difficult to see the utility of making the decision to refuse leave to remain (for example) dependent on the decision whether or not to issue removal directions. So far as an overstayer is concerned, it makes no difference to his legal position if the Secretary of State decides not to issue removal directions, or to defer deciding whether to issue removal directions. It is only if the Secretary of State is under a duty to and does issue removal directions that an immigration decision is made giving rise to a right of appeal. It seems to me that

although in paragraph 46 of Mirza Sedley LJ referred to "an unjustified deferral of a decision on removal", he must have meant "an unjustified deferral of a decision to remove" and thus was interpreting the legislation as imposing a duty, owed to overstayers, to issue directions for their removal.

1.
Quite apart from these considerations, I wish to underline my agreement with paragraphs 50 and 51 of the judgment of the Master of the Rolls. As I indicated above, to hold that an otherwise lawful decision, for example to refuse to extend leave to remain, becomes unlawful because the Secretary of State fails to make a decision to remove within a short period thereafter would be to create a principle of retrospective unlawfulness or invalidity that was, until the decision in Mirza , unknown to the law. Parliament could, of course, provide that the decision on leave would only be lawful if a decision on removal were made within a defined time thereafter, but it has not done so. Aikens LJ in Sapkota was conscious of this difficulty with the decision in Mirza , which is evidently why he adopted, in paragraph 101 of his judgment, the formulation that the Secretary of State must contemplate that the removal decision will be taken promptly after the decision on leave. But, as the Master of the Rolls points out, this creates its own legal and practical difficulties. The contemplation of a decision maker as to when or even whether he will make a separate decision under a separate statutory provision has never been a ground for judicial review. Moreover, putting aside cases where a decision maker has made a decision for an improper purpose, how is the person affected by the decision to know or to ascertain what was the contemplation of the decision maker? What if the decision maker changes his mind, or forgets to do what he contemplated earlier? What if when refusing to extend leave to remain he did not contemplate making a decision on removal, but in fact does make that decision shortly after? What if the decision to remove is not made "promptly" (whatever that means) after the decision to refuse to extend leave, but is made at a later date? None of these questions is susceptible of an acceptable answer. “

Hallet LJ agreed with both judgements.

11.
We accordingly must proceed on the basis that a decision refusing further leave may stand on its own: it is not rendered unlawful by being unaccompanied by a removal decision. Nor, of course, can there be any suggestion that if there is a removal decision, the decisions that have been made are somehow combined into one decision. They remain separate decisions, made under separate statutory powers to make decisions, and carrying separate rights of appeal under s 82(2).

12.
Section 47 is the subject of a decision of this Tribunal in Ahmadi v SSHD [2012] UKUT 147. Although before us Mr Melvin indicated that the Secretary of State did not agree with that decision, and although we understand that she has sought permission to appeal against it, we can see no reason for not following it. On the contrary, it appears to us to have been clearly correct. The effect of it is that a decision under s 47 is not lawful if it is in the same document as, or otherwise accompanied by, the decision refusing further leave. The reason for that lies in the statutory provisions, which are perfectly clear. Section 3C extends the relevant leave by three steps, set out in s 3C(2). They are (a) up to the decision; (b) the time when an appeal could be brought; (c) the time when any appeal is pending. The section itself provides for the interpretation of when an application is “decided” to be dealt with by regulations, and the regulations make it clear that the making of the decision involves the giving of the notice required by the notices regulations. Until that notice is given, period (a) is still running; and time during which an appeal may be brought has not begun. Section 47 permits a decision to be made

only during period (b). If the decision is on the same piece of paper as the decision refusing leave, it has been made too early: period (a) is still running and period (b) has not yet begun.

13.
We are not aware of any possible escape from this conclusion. It has been suggested that the effect of the statute is to produce an absurdity, but that cannot be right, It is not impossible for a s 47 decision to be made within the period specified within s 47 itself. Any more elaborate reinterpretation of the period specified in s 47 would have to take into account the interaction between s 47 as it applies to variation decisions and as it applies to revocation decisions, in respect of which there is, in s 3D of the 1971 Act, no equivalent of period (a).

14.
For the foregoing reasons this Tribunal will follow Ahmadi , and will take the view that a s 47 decision is unlawful if combined with a decision to refuse further leave. Thus, it appears that, in a case where the refusal to extend leave and the decision purportedly under s 47 are served together, the latter is unlawful but the former is not rendered unlawful by having to stand alone if the latter drops. Both decisions are appealable, and the question is what is to happen if they are appealed.

**The appeals**

15.
Mrs Adamally is a national of Sri Lanka. She came to the United Kingdom on 29 October 2008 with entry clearance as a dependent spouse of a Tier 4 Student, valid from 28 October 2008 to 28 October 2011. On 19 October 2011 she applied for leave to remain in the United Kingdom. She was refused, and at the same time as the refusal the Secretary of State purported to make a decision under s 47 that she should be removed.

16.
She appealed, and her appeal was heard by First-tier Tribunal Judge Buckwell. Following Ahmadi , he decided that the removal decision was unlawful. He thereupon purported to determine the whole appeal before him by “remitting” to the Secretary of State to rectify the defective notice. He made no enquiry into, or decision on, the merits of the refusal to vary leave.

17.
Mr Jaferi is a national of Pakistan. He entered the United Kingdom on 22 November 2002 as a student. There were further extensions, and his final leave was as a work permit holder, until 27 March 2011. On 16 March 2011 he applied for indefinite leave to remain on the basis of his work permit employment. His application was refused, and at the same time the Secretary of State purported to decide that he should be removed by way of directions under s 47.

18.
He appealed. First-tier Tribunal Judge Wellesley-Cole too followed Ahmadi and decided that the decision under s 47 could not stand. She made no enquiry into the merits of the decision refusing leave, but, like Judge Buckwell, “remitted” the decision to the Secretary of State to rectify what she described as a defective notice.

19.
The Secretary of State appealed against both decisions, on identical grounds as follows:

“An appeal was brought to the FTT against simultaneous decisions to vary leave such that the appellant had no leave (82 (2) (e) 2002 Act) and to remove by way of directions under section 47 of

the 2006 Act (82 (2) (ha)). The First-tier Tribunal Judge had regard to the reported decision of **Ahmadi (s47. decision: validity: Sapkota)** and without any further consideration of the merits held that the appeal fell to be allowed and returned to the Secretary of State for further consideration.

This approach ignores the following:

•
That the appeal was to be treated as brought against two separate decisions served simultaneously (85 (1) 2002 Act);

•
That, following **Patel** **[2012] EWCA Civ 741** , the variation decision was not affected by the absence of a lawful removal decision including the presence of an unlawful one (which, it is reiterated, is disputed in any event);

•
That it was incumbent upon the Tribunal to decide any matter raised as a ground of appeal;

•
That it is contrary to the outcome in **Ahmadi** , wherein the Upper Tribunal dismissed the appeal despite finding that the section 47 decision could not lawfully be made simultaneously with a refusal to vary;

Accordingly, it is respectfully submitted that the FTT ought (irrespective of the question of whether **Ahmadi** was correctly decided) to have ruled on the substantive merits of the grounds and to have treated the two immigration decisions separately.

The Secretary of State, therefore, seeks a full decision in respect of the grounds raised against the variation decision including a ruling that it was not contaminated by any unlawfulness in the removal decision such as to render it not in accordance with the law".

**Discussion**

20.
Permission was granted, and we heard both appeals together. Although at the beginning of the hearing Mr Jafar thought that the position he would be taking on behalf of Mr Jaferi would be identical to that adopted by Mr Malik on behalf of Mrs Adamally, it transpired that there were some differences.

21.
Mr Malik drew our attention in particular to ss 85 and 86 of the 2002 Act, which we have set out above. Section 85(1) applies only in circumstances in which an appellant before the Tribunal is the subject of another immigration decision against which he has (not, we think, "had") a right of appeal. Thus, if at the time he gives his notice of appeal against an immigration decision, there is another immigration decision affecting him, which carries a right of appeal, and the time for appealing which has not yet expired, the Tribunal has to treat the appeal against the first decision as including an appeal against the second decision. Presumably the same applies if the person becomes the subject of the second appealable decision while the appeal relating to the first decision is pending before the Tribunal. In any event, there appears to be no doubt that the result of the process of combination is that there is still a single appeal before the Tribunal, but that it "includes" an appeal against the decision which the appellant has not specifically appealed. What the grounds of appeal against the

second decision are supposed to be, we do not exactly know: but that will not necessarily prevent the Tribunal from doing justice in an individual case.

22.
Having established, uncontroversially in our judgment, that in these circumstances there is a single appeal before the Tribunal, Mr Malik went on to argue that the statute required that appeal to be either allowed or dismissed as a whole. He pointed out that sub-s (3) of s 86 precedes sub-s (5), and argued that the effect was that if there was any ground for allowing the appeal, it fell to be allowed: only if there were no grounds for allowing the appeal should it be dismissed. There was only one appeal, and it could not be both allowed and dismissed: in cases such as the present, because the appeal against the s 47 decision fell to be allowed, the appeal as a whole must be allowed. The immigration judge need not concern himself with the merits of the decision refusing leave: it was necessary for the Secretary of State to start the whole process again, and make anew and serve whatever decisions were appropriate. In the mean time, of course, the applicant would continue to benefit from s 3C leave, because the effect of the judge's decision would be that there had as yet been no lawful decision on the appellant's application for variation of leave. Mr Jafar associated himself with those submissions.

23.
We do not accept them. In these circumstances, there is indeed one appeal before the Tribunal, but the wording of s 86(3) and (5) makes it in our view clear that it is open to the Tribunal to allow an appeal in part and to dismiss it in part. Indeed that may well happen when there is only one decision under consideration, but different grounds are relied upon, all of which have to be considered in accordance with s 86(2). In cases such as the present, we see nothing in the wording of s 86 which prevents a judge from disposing of the appeal by deciding that in so far as the appeal before him is against a decision made purportedly under s 47 it is allowed, but in so far as the appeal relates to a decision refusing variation of leave, it is dismissed.

24.
Reading the section in that way has a number of other advantages. First, it is in accordance with the ratio of Patel . That is because if Mr Malik's construction were to be adopted, the judge would be required to declare as retrospectively invalid the decision refusing to vary leave, which itself was not invalid at the time that it was made. Secondly, adopting Mr Malik's construction would produce different results according to whether the appellant put in notices of appeal against both decisions, or only one. If he put in notices of appeal against both decisions, he would of course succeed in challenging the s 47 decision, but he might lose his appeal against the refusal to vary: but if he put in only one notice he would be bound to win his appeal against both decisions, with the consequent advantage to him in terms of s 3C. That cannot have been intended. Thirdly, the interpretation we have adopted allows the phrase "in so far as" its full meaning. Mr Malik's proposed interpretation would treat that phrase as synonymous with "if". "If" was indeed the word used in the predecessors of s 86, that is to say in s 19 of the Immigration Act 1971 and in para 21 of schedule 4 to the Immigration and Asylum Act 1999. The change to the present wording must have been deliberate, and would appear clearly to have the effect we have indicated. Fourthly, given that following Patel , the refusal to vary leave can stand by itself, there simply is no good reason why, when an appeal against that decision is clearly before the Tribunal, the Tribunal should not determine it. Indeed, if grounds of appeal have been advanced, the Tribunal is required to determine them. (As pointed out in paragraph 21 above, there will be no grounds if the refusal to vary leave is the decision included in the appeal by virtue of s 85(1).)

25.
At the end of the day, the result should be that the Tribunal determines in substance the appeal brought against the lawful decision, and declares the other decision unlawful. The Secretary of State ought not to have made the s 47 decision, but, with the benefit of the Tribunal's decision on the merits of the refusal to vary, can decide whether the person should be subject to a removal decision. As to that, it appears to us that the Tribunal should not express any view. To dispose of the appeal in such a way as to suggest to the Secretary of State that a new removal decision ought to be made is, in our judgement, quite wrong. For that reason if no other, use of the word "remit" is not appropriate.

**Disposal**

26.
We return now to the disposal of the present appeals. Both the First-tier Tribunal judges erred in law by failing to appreciate the need to determine the appeal in so far as it related to each of the included decisions. So far as concerns Mr Jaferi's appeal, the position is clear. Judge Wellesley-Cole commenced the determination of the appeal but has not yet completed it. She has correctly decided that the decision under s 47 is one which is not in accordance with the law, but her decision on the merits of the refusal to vary Mr Jaferi's leave is still awaited. We set aside her decision. We remit the case to the First-tier Tribunal with the following directions. The appeal is to be heard by Judge Wellesley-Cole. She is to allow the appeal in so far as it relates to the decision under s 47. She is to determine the grounds of appeal raised in relation to the refusal to vary Mr Jaferi's leave, and decide whether the appeal falls to be allowed or dismissed in so far as it relates to that decision.

27.
Mrs Adamally's case is less clear, because Mr Malik told us firmly at the hearing before us that before Judge Buckwell she had relied only on the ground that the s 47 decision was not in accordance with the law and that, accordingly, the appeal had to be allowed. No grounds relating to the merits of the decision to refuse to vary leave were advanced. When it became clear that we were unlikely to adopt his principal argument, Mr Malik told us that the appellant would have relied on other grounds if Judge Buckwell had not said that he was going to "remit" the matter to the Secretary of State. In these circumstances, we have examined the file. There is no doubt that the substantive grounds are very thin indeed. Instead of setting out any argument why the appellant's private life ought to enable her to remain in the United Kingdom despite the provisions of the Immigration Rules, a total of nineteen paragraphs of "grounds of appeal" and "additional grounds" say almost nothing that could not be said in every similar case and, at the one point where they descend to particulars, merely set out basic facts which it is said should have "alerted" the Secretary of State to the engagement of article 8. These clearly take the matter no further at all: the decision letter is almost wholly devoted to the consideration of article 8. The appellant's representatives did send a bundle to the Tribunal before the hearing, including witness statements of the appellant and her brother, but at the hearing itself the appellant did not attend, and her solicitor told the Tribunal that he had "accidently forgotten" to bring the appellant's bundle. He it was who asserted that the appeal had to be allowed outright and that the Tribunal was not permitted to inquire into the merits of the decision to refuse leave.

28.
Clearly the course of events reflects no credit at all upon the appellant's solicitors, Malik Law Chambers. We are, however, just persuaded that in this case too the judge should have a further opportunity to consider whether the appeal should be allowed or dismissed in so far as it relates to the decision refusing further leave. We accordingly remit Mrs Adamally's case to the First-tier Tribunal with the following directions. The appeal is to be heard by Judge Buckwell. He is to allow the

appeal in so far as it relates to the decision under s 47. He is to determine the grounds of appeal raised in relation to the refusal of vary Mrs Adamally's leave, and to decide whether the appeal falls to be allowed or dismissed in so far as it relates to that decision.

29.
Both judges made fee awards . We set aside both those awards, the judges will need to determine whether any fee award is appropriate, when they have concluded their work on each of these appeals.

Signed

C M G OCKELTON

VICE PRESIDENT OF THE UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER

Date: 1 November 2012

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[1] "… if the result of the refusal is that the person has no leave to enter or remain" (S 82(2)(d)).