Upper Tribunal
(Immigration and Asylum Chamber)

)

ZEI and others (Decision withdrawn - FtT Rule 17 – considerations Palestine
[2017] UKUT 00292 (IAC)

THE IMMIGRATION ACTS

Heard at Field House

On 25 October 2016 and 16 December 2016

Before

MR C M G OCKELTON, VICE PRESIDENT

UPPER TRIBUNAL JUDGE DAWSON

Between

Z E I and Others

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellants: Mr R Drabble QC and Mr T Royston, solicitors instructed by

Wilson Solicitors LLP

For the Respondent: Mr P Deller, Senior Presenting Officer

Rule 17 clearly envisages that in general the appeal is to be treated as withdrawn. It will continue only if a good reason is identified for allowing it to proceed despite being an appeal against a decision that will not have effect in any event. The appellant needs the opportunity to advance a case why he considers an appeal should not be treated as withdrawn, and the SSHD needs the opportunity to respond. The Tribunal has no power to require the Secretary of State to give (or even to have) a good reason for her decision.

The list below cannot and should not be regarded as a comprehensive account of all reasons that might be urged on judges, but we trust that as well as giving guidance on the arguments discussed the reasoning may be adapted to other cases.

(i) The following are not likely to be considered good reasons:

- The parties wish the appeal to proceed.

- The applicant is legally aided and if he has to appeal against a new decision, he will not (or will probably not) be legally aided because the legal aid regime has changed.

- The withdrawal is for reasons the judge considers inappropriate is very unlikely to be a good reason to proceed. An example is that of a Presenting Officer who seeks adjournment of a hearing and when that is refused, withdraws the decision.

- The witnesses are ready to be heard and can only with difficulty or expense be gathered again.

(ii) The following are likely to be capable of being a good reason.

- The appeal regime has changed since the first decision, so that if a new decision is made in the same sense, the rights of appeal will be reduced.

- Undue delay by the respondent.

- T he appeal turns on a pure point of law that the judge thinks that even after argument is certainly or almost certainly to be decided in the appellant's favour.

- If there has already been a considerable delay in a decision the appellant is entitled to expect, the fact that children are affected.

DECISION AND REASONS

INTRODUCTION

1.
Rule 17 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 provides:

"17. —(1) party may give notice of the withdrawal of their appeal—

(a) by providing to the Tribunal a written notice of withdrawal of the appeal; or

(b) orally at a hearing,

and in either case must specify the reasons for that withdrawal.

(2) The Tribunal must (save for good reason) treat an appeal as withdrawn if the respondent notifies the Tribunal and each other party 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 and specifies the reasons for the withdrawal of the decision.

(3) The Tribunal must notify each party in writing that a withdrawal has taken effect under this rule and that the proceedings are no longer regarded by the Tribunal as pending."

2.
On 11 December 2014 , the Secretary of State decided to remove the first appellant having refused his claim for asylum for reasons given in her decision dated 18 November 2014. The Appellant is a national of Palestine and was last resident in Lebanon . In summary , she considered that was no reasonable degree of likelihood that he would be at risk of serious harm on return to Lebanon . Contemporaneous decisions by the Secretary of State addressed t o the first appellant's wife and child indicated that they d id not have an in-country right of appeal (unlike the first appellant) .

3.
In a letter dated 2 2 December 2014 the appellants' solicitors notified the First-tier Tribunal that when the first appellant had claimed asylum , he ha d asked that his wife and son should be included

as dependants on his application. That application also raised human rights grounds on behalf of not only the appellant but also his dependants individually. That being so it was contended that all parties had an appealable decision which could be considered in country in accordance with s.92(4)(a) Nationality, Immigration and Asylum Act 2002. A ppeal s were issued for all three .

4.
On 2 March 2015 , the appellant s came before First-tier Tribunal Judge Simpson sitting in Manchester . The judge's R ecord of Proceedings indicate s that Miss E Homer, the Presenting Officer withdrew the decisions under appeal owing to a "technical p roblem" with the removal directions which had been to ' Palestinian T erritories ' ". It appears the judge gave her decision orally and thereafter notice was sent to the parties in the following terms:

" 1. Under R24 a decision may be given orally.

2. The reasons for the decision were also given orally, they were:

(a) there was a technical problem in that the removal directions were set for " Palestinian Territories " but this is not a lawful destination.

(b) while removal directions are likely to be amended to Lebanon there has to be consideration of his partner's nationality ie Tunisian given their child.

3. Any fresh appeal is reserved to Mrs A.K. Simpson

4. This was ALL [emphasis retained] announced orally.

5. This was not a decision it was a withdrawal under R17(b)

6. Given that the respondent's reasons were valid there was no ground to object the withdrawal."

5.
We note that the judge did not address the point whether the second and third appellants has valid appeals but instead treated them as matters before her. T he appellants applied for permission to app eal her decision to the Upper Tribunal on 30 March 2015. On 8 May 2015 , the First-tier Tribunal issued a notice in the following terms:

" The application for Permission to Appeal to the Upper Tribunal received on 31st March 2015 is not valid."

6.
Undaunted, the appellants renewed the application to the Upper Tribunal relying on grounds that there was a right of appeal against the FtT's decision of 18 March. The First-tier Tribunal ha d misdirected itself; the proper test was not whether the Secretary of State ha d demonstrated a single 'valid' reason for withdrawal . Instead it was whether there is "good reason" to allow the appeal to continue in all the circumstances. T he second limb to the grounds asserted that inadequate reasons had been given for the decision. Finally , it was argued that it was irrational for the First-tier Tribunal to accept the reason given by the Secretary of State as it was not a matter relied on by her in correspondence with the First-tier Tribunal and the appellants.

7.
Whilst consideration of that application was pending in the Upper Tribunal , the appellants applied for permission to proceed with a claim for judicial review of the decisions of the First-tier Tribunal. The Upper Tribunal and the Secretary of State were included as interested parties. By order dated 19 May

2016 , the claim against the First-tier Tribunal was stayed pending determination of the pending proceedings before the Upper Tribunal of whether a statutory right of appeal existed against the decision of the First-tier Tribunal. On that basis , the matter came before the Vice-President , who f or reasons given in his decision dated 27 January 2016 , granted permission in the following terms:

“ 1. This case has a contorted history. The present applicant was refused asylum and appealed on asylum grounds against the decision to remove him, the specified destination being ‘ Palestinian Territories ’. (Two family members brought appeals w ere recognised in limine as invalid: no further question arises in respect of them.) At or shortly before the hearing of the appellant’s appeal the HOPO decided, for reasons unknown to me and not obviously supported by paragraph 8 of Schedule 2 to the Immigration Act 1971 (‘ country or territory’), that the proposed destination was unlawful; she withdrew the decision against which the appeal was brought.

2. In those circumstances under the FtT’s current rules (as distinct from the rules they replaced) the Tribunal had, under r 17(2) a discretion or partial discretion whether to treat the appeal as withdrawn. The rule is rather loosely drafted and its wording raises the issue whether withdrawal is automatic if the Tribunal does not exercise its discretion. The Tribunal issued two different notices, one saying that as the original decision had been withdrawn it was satisfied that the appeal had been withdrawn (this was the standard form and does not appear to have been changed in 2014 to reflect the change in the Rules) and one signed by the judge indicating the reasons for the withdrawal of the decision, but not for any consequent decision by the Tribunal. This notice asserts that ‘this [is] not a decision it is a withdrawal’ and that ‘given that the respondent’s reasons were valid that was no ground to object to the withdrawal’.

3. Pausing there, I note that that first assertion is very dubious if the Notice records activity by the Tribunal under r 17(2); it is arguable that the respondent’s reasons were in part not valid (see above); and that in any event the judge was concerned not with whether the decision was validly withdrawn but with whether the appeal against the decision was to be treated as withdrawn.

4. The appellant thought and thinks that this was not an appropriate case for the Tribunal to treat the appeal as withdrawn and that in any event the Tribunal ought to have made a decision on his representative’s submissions that this was a case in which there was good reason to allow the appeal to proceed, preferably giving reasons for such decision as it might make on that point. He applied to the FtT for permission to appeal. The clerk that received it sought advice from a judge and apparently in response to that advice wrote saying that the application was ‘not valid’ and that the Tribunal would take no further action. It is not easy to classify that letter but given that it had judicial authority (as I deduce from the papers on file) and given the terms of FtT rule 34, I think it is properly treated as e ither a refusal o f permission or a refusal to admit the application. The latter is no longer covered specifically by the FtT rules, but is envisaged by r 21(2) of the Upper Tribunal Rules. If it was not a refusal to admit it must I think have been a refusal of permission and in either case (subject only to the decision of the FtT being amenable to appeal) the appellant was now entitled to apply to the UT for permission to appeal.

5. It is said that a n application was made in time. It has not been traced, but I suspect that it may have been treated as a n ullity given the previous history. A new application was made on 9 July 2015. On 16 July 2015 a clerk to the UT wrote saying that the application could not be entertained because the ‘decisions about which you complain are excluded decisions’. I have examined the file and others have examined the UT’s database: there is no evidence that that letter had any judicial authority, and no clerk is entitled to exercise the judicial powers of the Tribunal in deciding applications for

permission, although it does not seem to me that there is any reason why a clerk should not convey the information that there is no valid application, provided that that is correct.

6. The appellant then commenced judicial review proceedings in relation to the UT's refusal to entertain the application for permission to appeal. I have not heard of any further progress with the appellant's actual appeal against any new immigration decision.

7. (i) Essentially for the reasons given in the grounds I consider that it is more than arguable that the FtT made a decision, which under s 11 of the 2007 Act carries a right of appeal unless it is an excluded decision; (ii) it is also more than arguable that the decision of the FtT, such as it was, reached after hearing submissions from the parties (the judge's notes occupy one and a half well-fi ll ed pages) was not procedural, ancillary or pre li m inary within the meaning of art 3(m) of SI 2009/275: see JH (Zimbabwe) v SSHD [2009] EWCA Civ 78 and Abiyat v SSHD [2011] UKUT 314 (IAC).

8. There is, therefore, as it seems to me, an appealable decision with arguable grounds. Given the history, I would not take a time point in relation to the application to the UT. The question is whether I have jurisdiction to determine that application. I think I have, for the following reasons. (i) If the position is that the letter from the UT clerk was ineffective to determine the application, then the application to the UT is pending and awaiting a decision which I can make. (ii) If it be said that the letter from the clerk brought or may have brought the application, and hence the proceedings before the UT, to an end, that was a procedural irregularity within the meaning of r 43(2)(d) and it is in the interests of justice to set his decision aside and re-make it: there has been n o application for that relief but the Tribunal can act on its own motion under r 43. (iii) Finally, if it be said that the FtT's response to the application for permission made to it was not either a refusal of permission or refusal to admit, the UT has no jurisdiction , but in that case necessarily the application to the FtT has not been decided and as a judge of the FtT I can decide it.

9. For the foregoing reasons as a judge of the Upper Tribunal I (if necessary) set aside the decision conveyed by the clerk of the Upper Tribunal and remake the decision conveyed by his letter; alternatively , I sit as a Judge of the First-tier Tribunal and consider the application made to it.

10 Permission to appeal to the Upper Tribunal is granted."

8.
On 27 April 2016, the Secretary of State made a further decision refusing the appellants' protection claim s . They a ppealed and were allocated c ase number AA /006432/2016 by the First-tier Tribuna l . The hearing has been adjourned by the First-tier Tribunal after a refusal of such an application in August 2016.

9.
On 25 October 2016 , we gave our decision that the First-tier Tribunal had materially erred in treating Appeal AA/11525/2014 as withdrawn and set aside the decision of the First-tier Tribunal with a view to remitting the case to the First-tier Tribunal for a fresh decision on whether to treat the appeal as withdrawn as the result of the Secretary of State's notice of decision to withdraw the decision under appeal. We now give our reasons for doing so. On 16 December , we heard submissions from the parties on the correct approach to be taken by the First-tier Tribunal when considering a decision by the Secretary of State to withdraw a decision . We now give guidance on the approach the First-tier Tribunal should take when considering notices under Rule 17(2). We also sat as judges of the First-tier Tribu nal in respect of AA/11525/2014 (and the accompanying appeals). Mr Deller on behalf of the

Secretary of State conceded tha t there was good reason for those appeal s continuing in the light of the submissions that had been made by Mr Drabble as to the impact on the availability of funding for the appellants in any new appeal and furthermore , in the light of the imp act of the amendments to s 82 under the Immigration Act 2014 which apply to Appeal No. AA/00643/2016. Accordingly , both appeals continue in the First-tier Tribunal and will require being determi ned.

DISCUSSION

10.
When the First-tier Tribunal is presented with a decision by the Secretary of State to withdraw a decision, in many cases this may result in a grant of leave and it is unlikely this will be controversial. But in other cases , as was the position in the appeals before us , this would be a precursor to another decision in respect of the outstanding application. The effect of amendments to s 82 is that a right of appeal against a decision made on or after 20 October 2014 is dependent on whether a protection or human rights claim has been refused or there has been a refus al to revoke a protection status . Rule 17 was amended by the Tribunal Procedure (First-tier Tribunal) (Immigration & Asylum Chamber) Rules 2014 introducing the requirement which is at the heart of this appeal ("save for good reason"). In its previous guise under the Asylum & Immigration Tribunal (Procedure Rules) 20 05 Rule 17 provided, inter alia,

" (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. "

11.
In many cases , we understand that the SSHD may want to consider new evidence or a change in circumstances by the appellant which warrants a further consideration of the claim or application before her. It is to an extent speculative but there is also the possibility that the SSHD may consider that the decision under challenge is in some way flawed and requires remaking.

12.
The Secretary of State operates a policy, W ithdrawing decisions and conceding appeals (Home Office, 04 June 2015). We are grateful to Mr Drabble for the helpful summary of the policy in his skeleton as follows:

"

(a)
rule 17(2) of the 2014 Rules 'brings the First-tier Tribunal procedure rules in line with Upper Tribunal Rules ;

(b)
SM (withdrawal of appealed decision – effect (Pakistan) [2014] UKUT 64 (IAC) (11 February 2014) is the relevant authority on the factors to be taken into account;

(c)
Where an appeal is not treated as withdrawn, a HOPO should participate in the appeal as normal;

(d)
A subsequent decision 'will have full regard to any findings made by the Tribunal unless the appeal is challenged'.

13.
We note that the sentiment summarised in paragrap h (a) is simply wrong; the Upper Tribunal Rules are silent on the matter. Reference is made in t he above policy guidance t o SM , a decision of the Upper Tribunal which was concerned with withdrawal of what were then immigration decisions in appeals in the Upper Tribunal . That case involved consideration of Rule 17 of the Upper Tribunal Procedure Rules and so not directly on the point of concern in the appeals before us. The following guidance was given.

(1)
Rule 17 (withdrawal) of the Tribunal Procedure (Upper Tribunal) Rules 2008 does not enable the Upper Tribunal to withhold consent to the withdrawal by the Secretary of State of the decision against which a person appealed to the First-tier Tribunal.

(2)
Whe re such a decision is withdrawn in appellate proceedings before the Immigration and Asylum Chamber of the Upper Tribunal that Tribunal continues to have jurisdiction under the Tribunals, Courts and Enforcement Act 2007 to decide whether the determination of the First-tier Tribunal should be set aside for error of law and, if so, to re-make the decision in the appeal, notwithstanding the withdrawal of the appealed decision. Such a withdrawal is not, without more, one of the ways in which an appeal under section 82 of the Nationality , Immigration and Asylum Act 2002 ceases to be pending.

(3)
When re-remaking a decision in a 2002 Act appeal where the decision against which a person appealed has been withdrawn by the Secretary of State, the Upper Tribunal will need to decide whether:-

(i) to proceed formally to dismiss (or, in certain circumstances, allow) the appeal; or

(ii) to determine the appeal substantively, including (where appropriate) making a direction under section 87 of the 2002 Act.

(4)
In deciding between (i) and (ii) above, the Upper Tribunal will apply the overriding objective in rule 2 of the 2008 Rules, having regard to all relevant matters, including:

(a) the principle that the Secretary of State should, ordinarily, be the primary decision-maker in the immigration field;

(b) whether the matters potentially in issue are such as to require the Tribunal to give general legal or procedural guidance, including country guidance;

(c) the reasons underlying the Secretary of State’s withdrawal of the appealed decision;

(d) the appeal history, including the timing of the withdrawal; and

(e) the views of the parties.

We agree with Mr Drabble’s submission that the above factors are likely to be applicable in the context of Rule 17(2).

14.

W e begin our conclusions by setting out what we see as the general princi ple in context. First, Rule 17 clearly envisages that in general the appeal is to be treated as withdrawn. It will continue only if a good reason is identified for allowing it to proceed despite being an appeal against a decision that will not have effect in any event. What is more, the reason (or combination of reasons) must be regarded by the judge as sufficiently good to justify a decision that the appeal should proceed. That is the effect of the causative 'for' in the rule: it is not enough merely that some good reason exists. This is not an issue of a 'burden of proof' exactly; but has some of the same characteristics. If no good reason is identified, the appeal will not proceed; and there must be room for discussion about whether a reason that is identified is good enough, although the time and energy occupied in such a dispute must be kept to a proportionate level, bearing again in mind that if the appeal proceeds the outcome may not affect either party directly. On the other hand, there can be no suggestion of rareness, or 'exceptionality'. If a reason is a good one, it may apply to a considerable proportion of the relatively few cases in which a decision is withdrawn.

15.
Secondly, even though the rule requires that the reasons for the withdrawal are specified, the appeal process does not, and cannot, include a determination of whether the decision ought to have been withdrawn. The First-Tier Tribunal has no jurisdiction in Judicial Review: its statutory powers are limited to hearing appeals against those decisions set out in the statute, which do not include the decision to withdraw an appealable decision. The enquiry as to whether there is a good reason not to treat the appeal i tself as withdrawn therefore is to take place in the context that the decision has been withdrawn, and, whatever else may happen, the former decision is not and cannot be operative against the individual to whom it was addressed. Further, although r 17(1) requires the reason for the withdrawal to be given, the Tribunal has no power to require the Secretary of State to give (or even to have) a good reason for her decision. In the present case, as it happens, the reason given appears to be one that wholly depends on a mistake of law by the Presenting Officer. It seems to us that the judge probably ought to have drawn to the officer's attention that the reason did not seem to be correct in law, but although the judge might thereby have persuaded the officer not to withdraw the decision, she had no power to prevent it. And, it may be appropriate to add, once a decision is formally withdrawn, that is the end of it. A new decision requires a new notice and a new appeal. So any influence on the officer's thought process must be before the withdrawal, or it is too late.

16.
Thirdly, it is appropriate to consider the nature and purpose of the appeal process. It is asymmetrical: only the individual affected can appeal to the First-tier Tribunal; all appeals at that level are against the government. In an appeal, the government hopes to have its decision endorsed, whilst the appellant hopes to have it set aside. By withdrawing the decision, the government signals the discontinuance of its wish to have the decision endorsed in an appeal. The respondent's side cannot subsequently be heard to assert the desirability of proceeding with the appeal. If that was what they thought, they should not have withdrawn the decision. The question of whether to proceed can therefore be raised only by the appellant.

17.
Thus, task before the FtT is not to consider whether there is a "valid reason" for withdrawal but instead, whether is a "good reason" why the mandatory eff ect of Rule 17(2) should not apply when application has been made by the appellant for the appeal not to be treated as withdrawn. If the issue is not raised by the appellant there is no need to decide it and in that case the default position of r

17(2) can be allowed to take effect, and a notice that the appeal is treated as withdrawn will be sent out.

18.
Consideration of an application by the appellant will include examination of the reason behind the SSHD's decision but not exclusively; the tribunal is also required to look at the impact on the appellant. Accordingly, the appellant needs the opportunity to advance a case why he considers an appeal should not be treated as withdrawn, and the SSHD needs the opportunity to respond. This is ideally done at the hearing if the appeal has been listed or by of directions for submissions if not. In general, it seems to us that the appellant should be given fourteen days to submit any argument why an appeal should nevertheless proceed and the SSHD , a like period to respond.

19.
We turn now to consider the considerations that were raised before us and oth ers that may be argued, to assess the degree to which any of them could be good reasons. Of course , the list below cannot and should not be regarded as a comprehensive account of all reasons that might be urged on judges, but we trust that as well as giving guidance on the arguments discussed the reasoning may be adapted to other cases.

a.
The parties wish the appeal to proceed. This is not a good reason. First , the appellant's wish to proceed is the process of raising the questio n, not part of its answer. Second ly, t he respondent cannot be heard to seek the continuation of an appeal in these circumstances . Finally t he joint wish of both parties cannot be a good reason when the wish of one of them cannot be.

b.
The applicant is legally aided and if he has to appeal against a new decision , he will not (or will probably not) be legally aided because the legal aid regime has changed. This is not a good reason. It is superficially attractive as a good reason, and was pressed by Mr Drabble and agreed by Mr Deller . But a moment's reflection casts severe doubt upon it. If it is a good reason, that would be because if an otherwise identical case was raised by a person who had had to pay his own legal costs it would have a lesser chance of being successful. It is impossible to see why the person who is not legally aided should suffer in this way.

c.
The appeal regime has changed since the first decision, so that if a new decision is made in the same sense, the rights of appeal will be reduced. This is capable of being a good reason. In these circumstances the withdrawal of the decision and its replacement by a decision made at a later date is likely to be wholly prejudicial to the appellant.

d.
There has already been undue delay by the respondent. This may be a good reason or it may not. It is capable of being a good reason in cases where the appellant has, by proper process, sought a decision on an application. The most obvious example is a paid-for application duly made. If there has been a long delay, which will be lengthened further by awaiting a new decision, that may be a good reason to proceed with an appeal against the withdrawn decision. But this argument cannot be a good reason if the decision is one the timing of which is wholly for the respondent. The most obvious example is a removal or deportation decision, whether or not combined (as it would now have to be in order to carry a right of appeal) with a human rights or protection decision.

e.
The appellant may succeed. This is perhaps the reason most likely to be asserted, and it is not at all easy to assess before the hearing takes place. The appellant's aim in bringing the appeal is essentially fulfilled by the withdrawal. In all ordinary cases , it cannot matter very much whether the decision is withdrawn before an appeal is launched, or while an appeal is pending or because it falls because of the Tribunal's decision. We note that the Secretary of State will, as she is bound to do, take account of any relevant judicial determination in making a new decision, but she is in any event bound to apply the law; and the general duty to follow a determination cannot be said in general to justify the holding of hearings to determine issues except based on a need to set aside a disputed decision. It might be said that if an appeal continues and is concluded in an appellant's favour, the appellant will benefit by that in a way in which he would not benefit by the withdrawal, because of the force of the determination. But that is only a benefit if he does indeed win the appeal, a matter which cannot normally be discerned before the appeal is heard, and which, in the Immigration and Asylum Chamber of the First-tier Tribunal may well depend on a judicial assessment of the credibility of witnesses. If the appeal proceeds and the decision is against the appellant , the new decision is almost bound to be adverse to him (but may be appealable again): in that case, time and resources will have been wasted because it turns out that the reason was not good. Further, there is the difficulty that if the appellant sees the case going against him, he can at any stage under rule 17(1) withdraw his appeal against the withdrawn decision, following which the judge could not issue the decision anticipated. It seems to us that the appellant's expectation of success may be a good reason if, but only if, the appeal turns on a pure point of law that the judge thinks that even after argument is certainly or almost certainly to be decided in the appellant's favour.

f.
The withdrawal is for reasons the judge considers inappropriate. We think this is very unlikely to be a good reason to proceed, for the reasons given above (the second of the general principles). An example discussed is that of a Presenting Officer who seeks adjournment of a hearing and when that is refused , withdraws the decision. Again , superficially that may appear to be a strong case for proceeding, but given that in these circumstances the officer is unlikely to take a meaningful part in the proceedings, the result is equally unlikely to be the careful judicial assessment of opposing positions leading to a decision upon which the respondent would have to base any new decision.

g.
The witnesses are ready to be heard and can only with difficulty or expense be gathered again. This is very unlikely to be a good reason. It is in many ways litt le more than a special case of (e) above; and looks too far forward in trying to make provision for a further adverse decision, a further appeal, and the need to have the same witnesses at that stage.

h.
Children are affected by the decision, the appeal, the withdrawal, and the wait for a new decision. This is a special case of (d) above. If there has already been a considerable delay in a decision the appellant is entitled to expect, the fact that children are affected may make a good reason better. But if the decision is one that the appellant has no right to timetable, particularly if the appellant is already in breach if immigration law, the effect on children is unlikely to make very much difference, it being remembered that the context is still that the withdrawn decision will not itself have any effect at all.

20.

In the present case, as we have recorded above, Mr Deller was evidently persuaded by reasons (b) and (c) . Reason (b) is not a good one, but ther e is no doubt that reason (c) applies. A new decision has been made but because of the date of the new decision, the appeal rights are substantially less. The appellant is thus prejudiced by the withdrawal. The fact that the withdrawal was for a reason that is extremely difficult to justify cannot, for the reasons given above, itself be a good reason, but it helps to show that the effect of the withdrawal is indeed prejudicial rather than merely unfortunate. We identify the fact that the new decision carries reduced rights of appeal as a good reason for allowing the appeal against the old decision (and thus governed by the old appeals provisions) to proceed.

NOTICE OF DECISION

The decision of the First-tier Tribunal treating the appeal (numbered AA/11525/2014) as withdrawn is set aside. We remit the case to the First-tier Tribunal for a fresh decision on whether to treat the appeal as withdrawn as a result of the notice by the Secretary of State to withdraw the decision under appeal. It is conceded by the Secretary of State that AA/11525/2014 should continue in the First-tier Tribunal. Accordingly, our decision sitting as judges of the First-tier Tribunal is that appeal numbered AA/11525/2014 is not to be treated as withdrawn and this appeal (and the related appeals) together with AA/00643/2016 remain pending before the First-tier Tribunal for determination.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies to the appellant and to the respondent and to all other persons save as may be required by other proceedings before any Court or Tribunal. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date: 5 May 2017

Upper Tribunal Judge Dawson