



JUDICIARY OF  
ENGLAND AND WALES

**SUMMARY**

**R (AMENA EL-ASHKAR) -v- SECRETARY OF STATE FOR THE HOME  
DEPARTMENT - JR-2022-LON-002069  
Mrs Justice Steyn DBE**

*[References in square brackets are to paragraphs in the judgment of the Court.  
Numbered references to errors are to the list of errors given in paragraph [3] of the  
judgment.]*

1. Mrs Justice Steyn, sitting in the Upper Tribunal (Immigration and Asylum Chamber) has handed down judgment in this judicial review claim today, following a hearing on 23 January 2024.
2. The judgment addresses issues arising as a result of the Secretary of State’s seriously flawed conduct of the proceedings, including the consequences of the Secretary of State’s breach of undertakings given to the Upper Tribunal, and his application to withdraw those undertakings. ([1]-[2])

**The application for judicial review**

3. The Applicant, Ms Amena El-Ashkar, is a stateless Palestinian academic and journalist based in Lebanon. In August 2019 she was awarded the Foreign, Commonwealth and Development Office’s Chevening scholarship, enabling her to complete a master’s degree at the School of Oriental and African Studies, before returning to Lebanon. In April 2021 she was awarded a full scholarship to study for a PhD in International Relations at the London School of Economics. ([7]-[8])
4. The Applicant applied for a student visa to enable her to attend LSE ([8]-[9]).
5. The Special Cases Unit (‘SCU’) of the Homeland Security Group within the Home Office determined that the Applicant’s presence in the UK was not conducive to the public good. On 30 September 2022, the Home Office informed the Applicant her application for entry clearance as a student was refused. ([9]-[10])
6. The Applicant filed an application for judicial review in the Upper Tribunal on 22 December 2022 ([21]). Neither she, nor the Upper Tribunal, were informed that the Secretary of State had (personally) certified the decision under s.2F of the Special Immigration Appeals Commission Act 1997, with the consequence that the challenge

should have been brought before the Special Immigration Appeals Commission ('SIAC'), rather than the Upper Tribunal (Error 3.2; [15], [21]-[24]).

### **The Secretary of State's errors**

7. The Secretary of State has acknowledged making nine errors in relation to the conduct of these proceedings. The list of errors is at [3]. They are addressed in more detail at [11]-[36].
8. The Secretary of State has acknowledged that the list of errors is long and mutually exacerbating; and that the errors, for which there is no excuse, are serious ([4]). The responsibility for the mishandling of the case lies primarily with the Secretary of State, but also to an extent, with the Government Legal Department ([4]).
9. The Secretary of State has given a fulsome, sincere, unreserved and unqualified apology to the Applicant and to the Upper Tribunal ([5], [28], [58(d)]). He has acknowledged the gravity of this matter, recognising that breach of undertakings given to the Upper Tribunal can give rise to a finding of contempt ([4], [56]). He agreed to pay the costs of the judicial review claim, including any consequential matters, on an indemnity basis.

### **Consequences of the breach of undertakings**

10. The Secretary of State stands rebuked for his admitted breaches of undertakings ([58]; [58(i)]; errors 3.7 and 3.8; [25]-[29]). Any breach of undertakings given to the Upper Tribunal is a matter of grave concern ([58], [4]).
11. The Tribunal decided that it was not necessary or proportionate for it to initiate contempt proceedings for the reasons given at [58(a)-(i)].

### **Application to withdraw the undertakings**

12. The judicial review proceedings were settled on the basis that the Secretary of State would make a fresh decision, and if he was minded to refuse the application, he would provide the Applicant with the gist of his reasons and give her an opportunity to make representations before making a final decision. The Tribunal approved the parties consent order reflecting this agreement, in which the Secretary of State gave undertakings ([25]).
13. The Secretary of State applied to withdraw the undertakings on the ground that he could not, responsibly, comply with the undertaking to disclose the gist of his reasons for refusal to the Applicant because to do so would harm the public interest ([59]-[60]).
14. The Tribunal granted the application, accepting the evidence that the Secretary of State's assessment is that he cannot responsibly comply, whilst emphasising that the Tribunal has not been able to make an independent assessment of the risk to the public interest entailed in disclosure, as the Upper Tribunal had not seen the underlying material ([69]).

### **Failure to notify the Applicant or the Upper Tribunal of the certification decision**

15. It was unnecessary to determine whether the failure to notify the Applicant or the Upper Tribunal of the certification decision (error 3.2) was also a breach of the duty of

candour, in circumstances where the Secretary of State acknowledged that he had been legally obliged to do so and the failure was a serious error. He had apologised, acknowledging the detrimental impact on the Applicant, and agreed to pay costs on an indemnity basis. ([71]-[76]).

### **Consequential matters**

- 16.** Following consideration of further representations, the Secretary of State will make a fresh decision on the application for a student visa. If the decision remains negative, and is again certified, any challenge will be brought before SIAC. ([70])

**NOTE: This summary is provided to help in understanding the Upper Tribunal's decision. It does not form part of the reasons for the decision. The full judgment of the Upper Tribunal is the only authoritative document. The judgment is a public document, available at: [www.judiciary.uk](http://www.judiciary.uk).**

**30 January 2024**