



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

Appeal Number:

IA/05794/2014

THE IMMIGRATION ACTS

Heard

at

Field

House

On 4 September 2014

**Determination
promulgated
On 5 September 2014**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

Secretary of State for the Home Department

Appellant

and

Hamayoun Ali Riyaz

(Anonymity direction not made)

Respondent

Representation

For the Appellant: Mr. I. Jarvis, Home Office Presenting Officer.

For the Respondent: No appearance.

DETERMINATION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Prior promulgated on 5 June 2014 allowing Mr Riyaz's appeal.

2. Although before me the Secretary of State is the appellant and Mr Riyaz is the respondent, for the sake of consistency with the

proceedings before the First-tier Tribunal I shall hereafter refer to Mr Riyaz as the Appellant and the Secretary of State as the Respondent.

Background

3. The Appellant is a citizen of Pakistan born on 24 February 1988. The relevant chronology of his immigration history is as follows:

4 Nov 2009: Appellant granted leave to enter the UK as a Tier 4 General Student valid until 29 December 2010.

24 Dec 2010: Appellant applied for further leave to remain as a Tier 4 migrant. His application was initially refused on 1 March 2011.

17 May 2011: Determination promulgated allowing the Appellant's appeal against the decision of 1 March 2011 (ref IA/10544/2011).

24 Jun 2011: Appellant granted further leave to remain as a Tier 4 migrant valid until 7 June 2014.

16 Apr 2012: Respondent purportedly curtailed Appellant's leave on basis that his course provider had reported that he was not attending his studies. There was an in-country right of appeal attaching to the decision, but no appeal was made.

17 Jan 2014: Appellant encountered by the Respondent's arrest team; arrested and detained as an overstayer. Removal decision issued to the Appellant with out-of-country right of appeal attaching.

30 Jan 2014: Appeal lodged with IAC. Notices of the immigration decisions of both 16 April 2012 and 17 January 2014 included with the covering letter enclosing the Notice of Appeal. Written

representations also included headed 'Right of Appeal' asserting that the decision of 16 April 2012 was not duly served on the Appellant until after his detention in January 2014, and seeking to appeal the decision of 16 April 2012 either 'in-time' because the decision had only recently been served on the Appellant, or alternatively seeking an extension of time in all the circumstances.

4 Feb 2014: Issue of validity of appeal considered by Duty Judge. A note on the Tribunal's file identifies that the Appellant wishes to appeal the decision of 2012 which he claimed had not previously been served. Appeal accepted as valid. 'Notice of In Time Appeal' issued by the Tribunal.

12 Feb 2014: Respondent withdraws decision of 17 January 2014.

23 May 2014: Appeal hearing before First-tier Tribunal.

4. The Appellant's appeal was allowed by First-tier Tribunal Judge Prior for reasons set out in the determination promulgated on 5 June 2014.

5. The Respondent applied for permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Hollingworth on 16 July 2014.

No appearance

6. There was no appearance by or on behalf of the Appellant today. I am satisfied that due notice of the hearing was given. The Tribunal is in receipt of a letter from Addison & Khan Solicitors (who are on record as the Appellant's representatives) dated 3 September 2014. The letter indicates that they have been unable to make contact with their client and in the circumstances will not themselves be in attendance.

7. I was satisfied that the Appellant had been afforded an opportunity of attending the hearing and/or sending any written representations and materials upon which he might wish to rely to

the Tribunal. In all of the circumstances, including the absence of any explanation for his non-attendance, I was satisfied that it was appropriate to proceed with the appeal in the Appellant's absence.

Consideration

8. The Respondent has raised one issue of challenge in the grounds in support of the application for permission to appeal. It was contended therein that in light of the withdrawal of the decision of 17 January 2014 on 12 February 2014, there was no appealable immigration decision before the Tribunal and the Judge accordingly lacked any jurisdiction to consider the Appellant's case, and in particular to make any assessment of the curtailment decision of 16 April 2012.

9. I note as an unsatisfactory feature the First-tier Tribunal Judge's failure properly to identify the immigration decision that founded his jurisdiction. Indeed the Judge refers at paragraph 2 of his determination to the Appellant appealing against a decision of 28 November 2013.

10. Be that as it may, Mr Jarvis acknowledged before me that in light of the decision of the Duty Judge the Tribunal had accepted jurisdiction on the basis of the Appellant's Notice of Appeal challenging the Notice of Immigration Decision of 16 April 2012. The withdrawal by the Respondent of the decision of 17 January 2014 - a decision that could not in any event have founded an in-country right of appeal - was therefore not material to the jurisdiction exercised by the Tribunal.

11. Further, it is to be noted that notwithstanding the failure adequately to identify the immigration decision under appeal in the opening paragraphs of his determination, the Judge addressed the substance of the curtailment decision which was the decision that was the subject of the appeal.

12. There being no other basis of challenge to the decision of the First-tier Tribunal Judge raised by the Respondent, Mr Jarvis acknowledged that the decision could not be impugned for error of law and should stand.

13. The Appellant should note that this does not resolve his current immigration situation. The effect of the decision is no more

than that the leave that was due to expire on 7 June 2014 was not curtailed on 16 April 2012. 7 June 2014 has, of course, now passed. The Appellant's leave is currently only by virtue of the statutory extension pursuant to section 3D of the Immigration Act 1971 because of the current pending appeal proceedings. Upon completion of the appeal process - in effect upon expiry of the time period for the Respondent to make an application for permission to appeal against my decision (see section 104(2)(a) of the Nationality, Immigration and Asylum Act 2002) - the appeal will no longer be pending and the Appellant's leave will lapse. If the Appellant has any doubts as to the implications of this, he should seek independent legal advice concerning regularising his immigration status or making arrangements to depart the UK.

Decision

14. The decision of the First-tier Tribunal Judge contained no error of law and stands.

15. Mr Riyaz's appeal against the decision of 16 April 2012 remains allowed.

Deputy Judge of the Upper Tribunal I. A. Lewis 4 September 2014