

Permission to Appeal decision in the matter of R (on the application of LA (Albania)) (Appellant) v Upper Tribunal Immigration and Asylum Chamber and another (Respondents)

3 July 2024

In the Supreme Court of the United Kingdom

UKSC 2024/0053

Before

Lord Reed
Lord Sales
Lady Rose

After consideration of the application filed on behalf of the Appellant seeking permission to appeal the order made by the Court of Appeal on 16 November 2023 and of the notice of objection filed by the Second Respondent

THE COURT ORDERED that

1. Permission to appeal be REFUSED because the Court does not have jurisdiction for the below reasons.
2. The Appellant pay the Respondent's costs in an amount to be determined in accordance with section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and Regulations made under it.

Reasons

1. Section 11A of the Tribunals, Courts and Enforcement Act 2007 provides, so far as material, as follows:

"11A Finality of decisions by Upper Tribunal about permission to appeal

(1) Subsections (2) and (3) apply in relation to a decision by the Upper Tribunal to refuse permission (or leave) to appeal further to an application under section 11(4)(b).

(2) The decision is final, and not liable to be questioned or set aside in any other court.

(3) In particular-

(a) the Upper Tribunal is not to be regarded as having exceeded its powers by reason of any error made in reaching the decision;

(b) the supervisory jurisdiction does not extend to, and no application or petition for judicial review may be made or brought in relation to, the decision.

(4) Subsections (2) and (3) do not apply so far as the decision involves or gives rise to any question as to whether-

(a) the Upper Tribunal has or had a valid application before it under section 11(4)(b),

(b) the Upper Tribunal is or was properly constituted for the purpose of dealing with the application, or

(c) the Upper Tribunal is acting or has acted-

(i) in bad faith, or

(ii) in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice.

(7) In this section- 'decision' includes any purported decision".

2. In the present case, the Upper Tribunal refused the appellant permission to appeal against a decision of the First-tier Tribunal. The High Court refused an application for permission to apply for judicial

review of the Upper Tribunal's decision, on the basis that none of the exceptions in section 11A(4) applied, with the consequence that the court lacked jurisdiction. The Court of Appeal dismissed an application for permission to appeal against that decision, on the ground that it had no jurisdiction to entertain an appeal: [\[2023\] EWCA Civ 1337](#).

3. The appellant now seeks permission to appeal against the Court of Appeal's decision on five grounds. Grounds 1 to 3 raise the question whether section 11A is effective in ousting the supervisory jurisdiction of the High Court, and if so, whether it is constitutionally permissible. Grounds 4 and 5 assert that the exception set out in section 11A(4)(c)(ii) applies.
4. The panel has concluded that Grounds 1 to 3 do not raise an arguable question. It is hopeless to contend that the terms of section 11A are ineffective in limiting the grounds on which the High Court may exercise its supervisory jurisdiction over a decision by the Upper Tribunal to refuse an application for permission to appeal from a decision of the First-tier Tribunal. The language of the provision could hardly be clearer. It is equally hopeless to contend that Parliament lacks the power to enact such a restriction. Parliament's power to restrict judicial review of decisions of the Upper Tribunal was accepted by this court in *R(Cart) v Upper Tribunal* [\[2011\] UKSC 28](#). The dictum of Lord Carnwath in *R (Privacy International) v Investigatory Powers Tribunal* [\[2019\] UKSC 22](#), para 144, relied on by the appellant, concerned a total ouster of judicial review, which is not the effect of section 11A.
5. It follows that section 11A(2) applies unless one of the exceptions set out in subsection (4) is applicable. In relation to that question, the panel has concluded that Grounds 4 and 5 do not raise an arguable question in the circumstances of the present case. None of the criticisms of the Upper Tribunal arguably constitutes acting "in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice".
6. It follows that the court has no jurisdiction to entertain the proposed appeal, by virtue of section 11A of the 2007 Act. Section 40(6) of the Constitutional Reform Act 2005 provides that the jurisdiction of the court is subject to any provision in another enactment which restricts appeals to the court from the Court of Appeal.
7. We note that, under Rule 11(2) of the Supreme Court Rules 2009, the Registrar may refuse to accept any application for permission to appeal on the ground that the court does not have jurisdiction under section 40 of the 2005 Act to issue it. Under Rule 9(4), the Registrar may refer the matter to a single Justice, or to a panel of Justices, for determination. In our view, applications of the present kind should in future be dealt with in accordance with that procedure.