Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02749/2014

THE IMMIGRATION ACTS

Heard at Stoke on Trent	**Determination Promulgated**
On 31 October 2014	**On 31 October 2014**

Before

Deputy Upper Tribunal Judge Pickup

Between

Neeraj Kumar
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Not represented
For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Neeraj Kumar, date of birth 4.9.90, is a citizen of India.

2. This is his attempt to appeal the determination of First-tier Tribunal Judge Coates promulgated on 22.5.14, refusing to extend time to appeal against the decision of the respondent to refuse his asylum, humanitarian protection and human rights claims and to remove him from the UK under

section 10 of the Immigration and Asylum Act 1999. The Judge dealt with the matter on the papers on 13.5.14.

3. First-tier Tribunal Judge Kamara purported to grant permission to appeal on 18.7.14.

4. Thus the matter came before me on 31.10.14, listed as an appeal in the Upper Tribunal.

5. There is no right of appeal to the Upper Tribunal against the decision made under Rule 10 of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

6. The relevant provisions dealing with the right of appeal from decisions of the First-tier Tribunal to the Upper Tribunal are contained in s.11 of the Tribunals, Courts and Enforcement Act 2007 as follows:

> "11. Right of appeal to the Upper Tribunal
>
> (1) For the purposes of subsection (2), the reference to a right of appeal is to a right to appeal to the Upper Tribunal on any point of law arising from a decision made by the First-tier tribunal other than an excluded decision.
>
> (2) Any party to a case has a right of appeal, subject to subsection (8).
>
> (3) That right may be exercised only with permission (or, in Northern Ireland, leave).
>
> (4) Permission (or leave) may be given by –
>
> (a) the First-tier Tribunal, or
>
> (b) the Upper Tribunal,
>
> on an application by a party."

7. The right of appeal is from any decision of the First-tier Tribunal on a point of law other than an "excluded decision." Section 11(5) of the 2007 Act sets out what, for the purposes of subsection (1) is an "excluded" decision. None of the decisions in s.11(5), as originally enacted, are relevant to this appeal. However, Article 3 of the Appeals (Excluded Decisions) Order 2009 (SI 2009/275 as amended) added a further decision to the category of "excluded decisions" which is relevant. Article 3 states that:

> "3. For the purposes of section 11(1) and 13(1) of the Tribunals, Courts and Enforcement Act 2007, the following decisions of the First-tier Tribunal or the Upper Tribunal are excluded decisions –
>
> ....
>
> (m) any procedural, ancillary or preliminary decision made in relation to an appeal against a decision under section 40A of the British National Act 1981,

> section 82, 83 or 83A of the Nationality, Immigration and Asylum Act 2002, or regulations 26 of the Immigration (European Economic Area) Regulations 2006."

8. That provision reflects the wording of s.103A(7) of the Nationality, Immigration and Asylum Act 2002 (now repealed) which excluded from the category of decisions of the Asylum and Immigration Tribunal which could be subject to the reconsideration process any "decision on an appeal" which was "a procedural, ancillary or preliminary decision". The words "procedural, ancillary or preliminary" which define the nature of the decision remain the same; the current provision (s.11(1)) requires that the decision be "in relation to an appeal", whilst the reconsideration framework (s.103A(7)) required it to be a decision "on an appeal".
9. There is no doubt that the decision in this case is a "preliminary" decision by the First-tier Tribunal. Indeed, rule 10(6) of the First-tier Tribunal Procedure Rules states, inter alia, that

> "The Tribunal must decide any issue as to whether a notice of appeal was given in time, or whether to extend the time for appealing, as a preliminary decision without a hearing…"

10. That reflects what must be the natural meaning, and consequent effect of, the legislative words initially in s.103A(7) of the 2002 Act and now found in Art 3(m) of the 2009 Order as amended.
11. In the circumstances, Judge Kamara was in error to grant permission to appeal. There can be no valid appeal before the Upper Tribunal against the refusal of the First-tier Tribunal to extend time.
12. The appellant's only remedy is to seek Judicial Review.

Decision

13. There is no valid appeal before the Upper Tribunal. The decision of the First-tier Tribunal stands.

Signed: Date: 31 October 2014

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: There was no fee payable in this case and thus there can be no fee award.

Signed: Date: 31 October 2014

Deputy Upper Tribunal Judge Pickup