



IAC-FH-CK-V1

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

Appeal Number: IA/34350/2013

THE IMMIGRATION ACTS

**Heard at Field House
On the 12th May 2015**

**Decision & Reasons Promulgated
On the 28th May 2015**

Before

**LORD MATTHEWS, SITTING AS AN UPPER TRIBUNAL JUDGE
DEPUTY UPPER TRIBUNAL JUDGE PARKES**

Between

**MR JOE BOCKARIE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Ukwuoma

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Joe Bockarie against the decision of First-tier Tribunal Judge Wylie in a decision promulgated on the 22nd January 2015 following a hearing at Hatton Cross on the 6th January of this year. The Appellant, who is a national of Sierra Leone born in May 1959, had entered the UK as a student. The college at which he was studying was closed. Its licence was withdrawn and a decision was taken to curtail the Appellant's leave as a student. That decision was taken on the 10th July 2012 and he was given 60 days until the 8th September 2012, a standard period of time to enable

students to obtain a further college and a further CAS letter on which they can rely for the purposes of the points-based system.

2. The Appellant maintained that he had not received any notice of the curtailment. However, in September 2012 he sought a variation of his leave on the basis of his family life with his now partner and her children. That was a live issue in front of Judge Wylie and in the course of the decision it was found as a fact in paragraph 25 that on a balance of probabilities the Appellant was aware that his leave to remain had been curtailed and that he was seeking an alternative route to continue his residence in the United Kingdom.
3. The Judge then went on to consider Article 8. The Secretary of State maintains that the curtailment decision served on the Appellant brought his time in the UK to an end and with no removal directions it meant that there was no decision that could be appealed. Therefore, having found that he was aware of the curtailment, there was no in-country right of appeal. The Appellant has maintained in the grounds of application that he either was not aware of the curtailment, although the finding was made against him, or that he had 28 days in which to appeal.
4. It really matters not which route is taken because the effect is still the same. In order to be able to maintain an appeal under the ECHR those facts must be brought to the attention of the Secretary of State before the relevant immigration decision is made. Therefore, once the curtailment decision had been served the Appellant could not then have made an application under Article 8. The only decision that could possibly have been considered by the Judge would have been the curtailment decision.
5. We are satisfied that the findings made by the Judge which have not been properly challenged at paragraph 25, that he was aware of the curtailment, were findings that were properly open to the Judge. If he thought that he had leave until the 23rd May 2013 it is difficult to understand why else he would have been making a further application based on those grounds at that time and that is clearly what the Judge believed.
6. We refused an earlier application to adjourn. The point in this issue is quite straightforward. We also note that the applicant was informed of the hearing today by notice of the 15th April 2015 and there has been plenty of time since then to prepare for this hearing and for the submissions that could be made but in summary we say this. The Judge clearly erred in continuing to hear the appeal after the finding that the Appellant was aware that his leave had been curtailed. The only decision available then to the Secretary of State was to grant an extra 60 days of leave, which was done, because the Appellant had not brought to the attention of the Secretary of State any claims under the European Convention on Human Rights. He was precluded from doing so by a combination of the reading of section 92 and the case of Nirula [2012] EWCA Civ 1436.

7. Accordingly we find that there was an error. We set the decision aside and find in this case that there was no valid appeal for the First-tier Tribunal to consider.

NOTICE OF DECISION

The appeal of the Secretary of State is allowed. The decision of the First-tier Tribunal is set aside and we remake the decision. There was no valid appeal for the First-tier Tribunal to consider.

No anonymity direction is made.

Deputy Upper Tribunal Judge Parkes

In finding that there was no valid appeal there can be no fee award.

Signed

Date 27th May 2015

Deputy Upper Tribunal Judge Parkes