



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

Appeal Number: IA/35719/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14th April 2015**

**Determination Promulgated
On 20th April 2015**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

And

Appellant

**MR VARUN VIR KAPOOR
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Ms J Isherwood, Home Office Presenting Officer

For the Respondent: None

DECISION AND REASONS

Introduction

1. Although this is an appeal by the Secretary of State I will refer to the parties as they were before the First-tier Tribunal.
2. The appellant is a citizen of India born on 15th October 1982. He arrived in the UK on 15th June 2010 as a Tier 4 student, and had leave in that capacity until he switched to permission to remain as a Tier 1 post-

study work migrant. His leave as a Tier 1 post-study work migrant expired on 9th August 2014. On 14th July 2014 he applied for leave to remain as a Tier 1 entrepreneur migrant. This was refused on 4th September 2014. His appeal against the decision to refuse was allowed by First-tier Tribunal Judge Landes, to the extent it was remitted to the Secretary of State for a lawful decision, in a determination promulgated on the 22nd December 2014.

3. Permission to appeal was granted by Judge of the First-tier Tribunal Simpson on 11th February 2015 on the basis that it was arguable that the First-tier judge had erred in law as the appeal should have been treated as abandoned as the appellant had left the UK on 17th December 2014, although the Tribunal was unaware of this fact.
4. The matter came before me to determine whether the First-tier Tribunal had erred in law

Submissions

5. The appellant did not attend the hearing, and neither did his legal representative AM Legal Consultants UK Ltd. I was satisfied that it was appropriate to proceed with the appeal as the notice of hearing had been served on the appellant and his representative by first class post at their correct addresses on 11th March 2015.
6. Ms Isherwood relied upon the grounds of appeal which contend that the appeal should have been treated as abandoned under s.104(4) of the Nationality, Immigration and Asylum Act 2002 as the appellant had left the UK prior to the appeal being finally determined. She also produced the Home Office computer record which showed that they had logged the appellant as having made a voluntary departure on 17th December 2014.
7. I indicated to Ms Isherwood that I accepted that this was correct although I considered the appeal pointless as the appellant had made a departure and taken his passport from the Home Office, which meant his application was treated as withdrawn under paragraph 34J of the Immigration Rules so no further action was required on the part of the Secretary of State.

Conclusions

8. I find that the appellant left the UK on 17th December 2014, which was five days before the determination of Judge Landes was promulgated and thus finally determined.
9. The Tribunal was unaware of this fact, however under s.92(8) of the Nationality, Immigration Act 2002 (this is the correct section of the 2002 Act since 20th October 2014) if an appellant brings an appeal whilst in the UK and then leaves prior to it being finally determined it is to be treated as abandoned unless it has been certified under s.94 or

s.94B of the Nationality, Immigration Act 2002. This appeal had not been certified and thus it should have been treated as abandoned and not have been determined.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal.
3. I do not re-make the decision as the appeal is treated as abandoned.

Signed:
Upper Tribunal Judge Lindsley

Date: 14th April 2015