



IAC-AH-SAR-V1

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

Appeal Number: IA/07562/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 20 April 2016
Oral Judgment**

**Decision & Reasons Promulgated
On 6 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR ADESOJI ORİYOMI ADEROWALE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr N Bramble, Home Office Presenting Officer

For the Respondent: Mr M Ume-Ezeoke, Counsel instructed by Nathan Aaron Solicitors

DECISION AND REASONS

1. The respondent (hereinafter “the claimant”) is a citizen of Nigeria born on 7 November 1984. The Secretary of State made a decision to remove him from the UK pursuant to Section 10 of the Immigration and Asylum Act 1999 on the basis that he

was a person who had sought leave to remain in the UK by deception. The deception of which he was accused was obtaining a certificate of Educational Testing Service fraudulently.

2. The Notice of Immigration Decision IS.151A ("the Notice") states that the claimant is entitled to appeal the decision after he has left the UK.
3. The claimant's appeal was heard by Judge Morgan who, in a decision promulgated on 21 September 2015, allowed the appeal. The decision includes no consideration of whether the First-tier Tribunal had jurisdiction to hear the appeal.
4. The grounds of appeal submit that the Tribunal erred by failing to recognise that it did not have jurisdiction to hear the appeal because the claimant was only entitled to appeal from outside the UK.
5. The grounds also allege a procedural irregularity in that the Tribunal stated there was no evidence submitted to support the Secretary of State's position as to fraud having taken place when such evidence was in fact served.
6. A further issue raised in the grounds concerns a signed copy of the Notice being handed to the judge after the appeal had concluded and the parties not having an opportunity to make representations in respect of it. Because of this alleged irregularity, Judge Morgan was given an opportunity to make a comment. In a letter, he stated that (a) the jurisdiction point was not pursued at the hearing, (b) there was no evidence before the Tribunal of the purported deception and (c) the original IS.151A was not provided by either party at the hearing. A copy was left behind by the claimant but he did not consider it in any event to be material to the outcome of the decision.

Consideration

7. Having heard submissions from Mr Bramble and Mr Ume-Ezeoke, my decision is as follows.
8. The claimant's right of appeal was pursuant to Section 82 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") (as then in force).
9. At the material time, Section 82 of the 2002 Act specified types of immigration decision against which there is a right of appeal.
10. One of the immigration decisions listed in Section 82, and the decision relevant to this appeal, is that found at sub-Section (g). Sub-Section (g) states:

"a decision that a person is to be removed from the UK by way of directions under Section 10(1)(a), (b), (ba) or (c) of the Immigration and Asylum Act 1999"
11. Section 92 of the 2002 Act identifies which immigration decisions can be appealed whilst an appellant is in the UK. The immigration decision identified in sub-Section (g) does not allow for appeals whilst the claimant is in the UK.

12. Accordingly, as made plain in the Notice, because the Immigration Decision being appealed is a decision specified in sub Section (g) for which there is not an in-country right of appeal, the claimant only has a right of appeal after leaving the UK.
13. Mr Ume-Ezeoke submitted, inter alia, that the jurisdiction point had not been raised by the Presenting Officer in the First-tier Tribunal. I accept this is the case but the First-tier Tribunal is a creature of statute whose jurisdiction is limited by Section 82 of the 2002 Act. Although there may be circumstances where a decision taken without jurisdiction will become irreversible, (see, for example, *Virk & Ors v SSHD* [2013] EWCA Civ 652) that stage has not been reached in this case and it is my finding that the First tier Tribunal made a material error of law by failing to recognise that there was no jurisdiction for this appeal to be heard whilst the claimant remained in the UK.
14. Having found that the First-tier Tribunal did not have jurisdiction there is no need for me to consider the Secretary of State's other grounds of appeal.

Decision

15. The decision of the First-tier Tribunal involved the making of a material error of law and is set aside.
16. I re-make the decision and dismiss the claimant's appeal.
17. No anonymity direction is made.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 2 May 2016