



IAC-FH-CK-V1

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

Appeal Numbers: IA/11742/2012
IA/11750/2012
IA/11752/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 18th February 2016**

**Decision & Reasons
Promulgated
On 17th May 2016**

Before

**THE HONOURABLE MR JUSTICE COLLINS
DEPUTY UPPER TRIBUNAL JUDGE SHAERF**

Between

**MRS MANORMA PATEL
MR KETANKUMAR DAVE
[M D]
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Balroop, Malik Law Chambers Solicitors (Bethnal Green Road)

For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. This appeal has a very unfortunate history. The main appellant was given leave to enter this country as a student way back in 2011 but when she arrived she was unable to take up the place at the college because she

was pregnant. The other two appellants were her husband and now child. The college unfortunately lost its sponsorship and so in 2012 the Secretary of State curtailed her leave which had been until 2014 and served her with an IS.151A but the notice stated that she was entitled to appeal but only out of country.

2. One is back of course to the law as it was before the amendments of the 2014 Act and Section 82(2)(e) then provided that an immigration decision included the variation of a person's leave to enter or remain in the United Kingdom if when the variation took effect the person had no leave to enter or remain and Section 92(2) which allowed an in country right of appeal applied to 82(2)(e). The view apparently was taken that a curtailment of leave was not a variation. We find it difficult to understand how that view could conceivably have been taken because it clearly varied her leave and resulted in there being no leave and accordingly in our view it is perfectly clear that there was an in country right of appeal. However, the appellant failed to apply for leave to appeal in time and furthermore failed when the First-tier Tribunal refused her leave to apply for further leave in time. There is a history of failure to apply in time and indeed it was that that drove the First-tier Tribunal in a decision given way back in 2012 to dismiss the appeal but they did say that there was no in country right and that was, as we have indicated, in our view clearly wrong.
3. However, what happened after that is somewhat unfortunate. We should add that the original leave which was curtailed would have expired in 2014. We do not need, we think, to go through the full details of what transpired thereafter. There were a number of applications which culminated, following a refusal of leave to appeal to the Tribunal, in a **Cart** challenge judicial review brought in 2013 and an indication by Mrs Justice Carr that the case was arguable. In fact it was decided by Mr Ockelton, the Vice President, that there should be refusal of leave and the application should not be admitted but that involved a variation of what I think had been an automatic decision without really considering the details before that leave should be granted. That went to the Court of Appeal and the Court of Appeal decided that Mr Ockelton had had no jurisdiction to vary the order. It then went on to constitute itself as a Divisional Court and made an order that the Tribunal should reconsider the appeal, the main point apparently being whether there was an in country right of appeal.
4. With great respect to the Court of Appeal, that order is one which is difficult to deal with now because we are of course not only a number of years on from the original decision but well over a year, nearly two years on from the date on which the original leave would have expired and the most that the appellant could have got out of the appeal was a removal of the curtailment on the basis that it should not have been issued. There was a question as to whether there had been service. It was the appellant's case that she had not received notice of the curtailment decision but there can be no question on the material that we have seen

but that it was properly served in as much as she has failed to provide her current address and service was on the representative who had been representing her but who apparently, it was said, failed to pass on notice of the curtailment but none of this could in any way now result in any basis for this Tribunal to do anything which was of real value.

5. Suffice it to say that we are indeed satisfied for the reasons we have indicated that there is only one sensible construction of Section 82(2)(e) as it then provided which meant that there was an in country right of appeal. The Court of Appeal seems to have directed us to ignore any question of whether there should be leave notwithstanding that the applications were made out of time. So what we propose to do is to allow this appeal to the extent that we quash the notice because the notice was an invalid notice since it did not properly indicate what were the rights of appeal.
6. Now the way ahead clearly, and this is something which, we think, was the only sensible outcome anyway because to spend more time and money in pursuing this appeal would have been completely pointless is for the appellants to make an immediate application to the Secretary of State if they wish to do so based upon the present situation. It seems to us that that should be made as soon as possible and we think that they should within 21 days make such an application. The Secretary of State will then consider it. We would hope that it does not take as long as the Secretary of State so often takes in reaching decisions in these matters but there is nothing we can do in relation to that so the only formal order the court makes is to allow the appeal for the reasons that we have given but we will add the requirement, or rather the indication, I do not think we can make it an absolute requirement, that any fresh application should be made within 21 days and certainly if it is not made we would expect the Secretary of State to make an immediate removal order but that is a matter for the Secretary of State.

Notice of Decision

The appeal is allowed

No anonymity direction is made.

Note the indication in paragraph 5 of the judgment.



Signed

Date: 2nd March 2016

Mr Justice Collins

TO THE RESPONDENT
FEE AWARD

No request made.

A handwritten signature in black ink, appearing to be 'MJC', written in a cursive style.

Signed

Date: 2nd March 2016

Mr Justice Collins