



IAC-PE-SW-V1

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

Appeal Number: IA/22456/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9<sup>th</sup> December 2015**

**Decision & Reasons Promulgated  
On 26<sup>th</sup> January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BAIRD**

**Between**

**CHAUDHARY MUHAMMAD KASHIF SIDDIQUE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Jafar - Counsel

For the Respondent: Mr Avery - Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by Chaudhary Muhammad Kashif Siddique, a citizen of Pakistan born 15<sup>th</sup> December 1982. He appeals against the determination of First-tier Tribunal Judge Adio issued on 25<sup>th</sup> June 2015 setting out his finding that he had no jurisdiction to consider the Appellant's appeal against the decision of the Respondent made on 18<sup>th</sup> June 2014 to refuse to grant him asylum. There were two issues - the first being whether or not the form IS151A relied upon by the Respondent had in fact been served and the second whether the Appellant had an in- country right of appeal. A

Judge of the First -tier Tribunal had dealt with the second issue as a preliminary matter and had decided that there was an in-country right of appeal.

2. On 18<sup>th</sup> September 2015, First-tier Tribunal Judge Cox granted permission to appeal. He said that having carefully considered the decision in relation to the grounds, he did not find arguable the ground which suggests that the Judge lacked jurisdiction to “re-decide” the issue of validity when another First-tier Tribunal Judge had earlier accepted as a preliminary issue that there was an in-country right of appeal. He said it is evident from paragraph 6 that Counsel for the Appellant accepted that the issue of validity was still live and needed to be dealt with. He went on to say that there may be arguable merit in the other two contentions in the grounds. Firstly, there is an issue of fairness arising from the Presidential stay on TOEIC cases and secondly, it may be arguable that the Judge at paragraph 13 relied on a finding as to the Respondent’s intention as to service of an IS151A notice rather than tackling the issue of whether or when it was actually served.
3. Briefly the history of this case is that the Appellant had leave as a Tier 4 (General) Migrant valid until 29<sup>th</sup> July 2013 and before expiry of this leave he submitted an application for further leave to remain. On 19<sup>th</sup> May 2014 the Respondent served on the Appellant a letter confirming refusal of his application for further leave. The Respondent alleges that the decision was accompanied by form IS151A parts 1 and 2. The Appellant claims he did not receive this. On 21<sup>st</sup> May 2014 the Appellant lodged an in-country appeal. On 29<sup>th</sup> May 2014 he made a claim for asylum which was refused with a right of appeal but as his appeal against variation of leave to remain in the UK was already listed, a second appeal against refusal of asylum could not be lodged. On 19<sup>th</sup> August 2014 a First-tier Tribunal Judge held that there was an in-country right of appeal and listed the appeal for an oral hearing on 16<sup>th</sup> December 2014. At that oral hearing, First-tier Tribunal Judge Adio gave directions to the Respondent to submit a witness statement from the Immigration Officer who served the IS151A. He adjourned the hearing and it was relisted for an oral hearing on 11<sup>th</sup> June 2015. At that hearing a witness statement was produced but it plainly stated that the Immigration Officer was not sure about service of the IS151A. He simply stated that normal practice would be for it to be served. Counsel for the Appellant in the skeleton argument and in oral submissions said that the issue of a right of appeal had already been decided and it could not be revisited. Mr Avery did not press the matter to any great extent.

### **Findings on error of law.**

4. With regard to the service of the IS151A there is no evidence that this has been served. It seems that Judge Adio accepted that normal practice would be for it to be served. What he said was that it is clear that the Respondent *intended* to serve it, the implication being that this was sufficient. He appears not to have considered that it was for the Respondent to prove that they had been served but they could not confirm the date they thought it was served or the actual service.

5. I accept that Judge Adio did attempt to give reasons for going against the previous finding of a First-tier Tribunal Judge that there was an in-country right of appeal. He did say that both parties considered the matter still to be open but this is surprising.
6. At paragraph 13 Judge Adio said:

“In view of the statement of the Immigration Officer that he would normally serve the IS151A and part 2 first and the fact that both the refusal letter and the IS151A and part 2 are all connected to each other towards making a decision under Section 10 of the Immigration and Asylum Act 2002 I find that the intention all along was to serve the Appellant with a Section 10 decision and that entitles him only to an out of country right of appeal.”
7. I cannot agree with that. It is imperative that the IS151A is served on the Appellant. I cannot find otherwise than that the way this appeal has been dealt with by the First-tier Tribunal has resulted in unfairness to the Appellant. Not only did he have a decision in his favour i.e. that he had a in-country right of appeal which was then taken from him but the finding was made that it is sufficient for the Respondent to have a practice in force and to have intended to serve an IS151A for the Appellant to have been found to have been aware that he was to leave the country and had only an out of country right of appeal. This cannot be so.
8. In all the circumstances I remit the appeal to the First-tier Tribunal for a hearing *de novo* before a Judge other than First-tier Tribunal Judge Adio.

**Notice of Decision**

The appeal is remitted to the First-tier Tribunal for a hearing *de novo*.

No anonymity direction is made.

Signed

Date: 22<sup>nd</sup> January 2016

N A Baird  
Deputy Judge of the Upper Tribunal