



IAC

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

Appeal Number: IA/42143/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision and Reasons  
Promulgated**

**On 4 January 2016**

**On 27 January 2016**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL HUTCHINSON**

**Between**

**MR ABID ALI  
(NO ANONYMITY DIRECTION)**

Appellant

**and**

**SECRETARY OF STATE**

Respondent

**Representation:**

For the Appellant: Mr M. Adophy, Rana & Co Solicitors

For the Respondent: Mr L. Tarlow, Senior Home Office Presenting Officer

**Notice**

1. The appellant is a national of Pakistan born on 15 January 1988. In a decision dated 4 September 2014 the respondent refused the appellant's application, made on 9 October 2013, for further leave to remain as a Tier 4 (General) Student Migrant. The respondent stated that the appellant had no right of appeal against the decision which was not an immigration decision under section 82(2)(d) of the 2002 Act as the appellant had no valid leave in the UK when he made the application on 9 October 2013. The 4 September 2014 letter indicates that the appellant had previously

been refused on 20 August 2013 with a right of appeal but those rights were not exercised.

2. The issue of whether the appellant had a right of appeal was considered on 10 November 2014 by First-tier Tribunal Judge Fisher who indicated that the matter was arguable and could be decided by the First-tier Tribunal Judge. The hearing on 18 May 2015 was adjourned, without considering the validity of the appeal, to allow the respondent to produce further evidence. First-tier Tribunal Judge Kinnell sitting on 24 June 2015 found that the appellant did not have a valid in-country appeal.
3. The appellant applied for leave to appeal to the Upper Tribunal, on the grounds that the Judge was wrong to conclude that the judge had no in-country right of appeal and secondly that the Judge failed to give adequate reasons for his decision. In a decision dated 20 October 2015, the First-tier Tribunal Judge considering permission stated that he was not satisfied that there was 'any arguable merit in either complaint' and set out why this was the case, including the history of the appellant's leave which was valid until 28 June 2013. The appellant made an in-time application to vary that leave on 28 June 2013. This application was refused on 20 August 2013 and a section 47 removal decision was made. Although those immigration decisions did carry a right of appeal the appellant did not exercise that right of appeal and therefore s3C could not operate to extend his leave. The appellant made a further application on 9 October 2013 which was refused on 4 September 2014 due to the lack of a valid CAS and alleged reliance upon a fraudulently obtained ETS certificate.
4. However, despite clearly intending to refuse permission to appeal to the Upper Tribunal for the reasons summarised above, the First-tier Tribunal's decision was headed: 'Permission to appeal is granted'. Although Mr Adophy argued valiantly that there was no error in the permission decision dated 20 October 2015, he conceded, as an officer of the court, that the decision pointed to a refusal.
5. I considered the grounds of appeal. Mr Adophy argued that the 20 August 2013 decision had not been served on the appellant or 'at all'. I had a copy of this letter and note it was addressed to the appellant at an address in Ilford, Essex, which is the same address that the Tribunal hold for the appellant. Mr Adophy suggested that the decision letter had not been served on the correct address and he relied on his skeleton argument which argued that another letter, from Opal College, had also been 'wrongly addressed' and was not received by the Appellant.
6. I do not find any merit in these arguments, not least because despite claiming that the wrong address was on the respondent's decision letter of 21 August 2013, Mr Adophy had to concede that the appellant's grounds of appeal to the Tribunal dated 22 September 2014 contained the same address. It is difficult to see how the respondent could be said to have had the wrong address for the appellant in August 2013 when the appellant was still using this address in September 2014 (and no new address has

been received by the Tribunal). The appellant's bundle also included a letter from the appellant to the respondent, dated 19 August 2013 which gives the same address for the appellant. Although Mr Adophy pointed to the 21 August 2013 refusal letter not being in the Home Office 'bundle' the information produced by the respondent related to the out of time application against which there is no valid appeal, rather than the earlier decision. The bundle was also not in the usual 'appeal bundle' form, and it is stated on the cover sheet that as the appellant was 'served with IS151A therefore caseworker hasn't prepared any PF1 and annexes for this case' presumably as this was not considered to be a valid appeal.

7. The appellant relied on the further letter dated 23 September 2013 from the respondent to the appellant in response to the appellant's indication in a letter dated 19 August 2013 that his sponsor had withdrawn his CAS. This letter stated that:

'... there is as nothing we can do about this. You will need to obtain a new CAS and submit a new application if you wish to remain in the United Kingdom'.

However, this is not a case, as Mr Adophy suggested, where the appellant was allowed 60 days to obtain a new CAS and was being advised of that right. The appellant's application had already been refused. The appellant did subsequently submit a new application which led to the refusal with no right of appeal.

8. There is no merit in the argument that the appellant did not receive the 21 August 2013 refusal letter and I note that the 'wrong address' argument has now been made about two separate letters: from the Home Office (in 2013) and Opal College (it is stated in the skeleton argument that this was July 2014, although it may well be that this was intended to say July 2013). Given that the Home Office sent the letter to the appellant's longstanding address in Ilford (and it is not suggested that the appellant did not receive the 23 September 2013 letter from the respondent again sent to the same address) this argument cannot succeed.
9. Although Judge Kinnell may not have specifically addressed the issue of the 21 August 2013 decision (and it does not appear that such was raised before him by the appellant) any error is not material as Judge Kinnell correctly identified that the appellant had lodged a further application, on 9 October 2013, after his leave expired.

### Decision

10. I affirm the decision of the First-tier Tribunal Judge that there is no valid right of appeal.

Signed

Date: 5 January 2016

M. M. Hutchinson

Deputy Judge of the Upper Tribunal