



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/09827/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 27th July 2017

**Decision
Promulgated**

On 04th August 2017

&

Reasons

Before

UPPER TRIBUNAL JUDGE KING TD

Between

GURJIT SINGH

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss E Greenwood, Counsel instructed by Bail for Immigration

Detainees (London)

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India. On 23 March 2016 a deportation order was issued against him.
2. Thereafter followed two decisions of the respondent. The first dated 4th April 2016 refusing a human rights claim, considered through the prism of

paragraphs 399 and 399A of the Immigration Rules. Certification under Section 94B of the 2002 Act was imposed.

3. Following that decision, certain representations were made on behalf of the appellant on 6th April 2016, which resulted in a supplementary decision of 25th April 2016.
4. As was made clear in both decisions, the appellant did not have an in country right of appeal, not least because of the certification that had been applied.
5. Notwithstanding that matter, somehow the First-tier Tribunal entertained an appeal which came before First-tier Tribunal Judge Colyer on 12th December 2016.
6. The Judge specifically noted the certification under Section 94B in the determination and cited the brief history of the appeal. The matter had come before a Duty Judge on 10th May 2016 on a timeliness point, seemingly the question of an in country right of appeal was not raised at that stage or indeed at the Case Management Review on 23rd June 2016. The Judge makes no finding one way or the other on this important issue.
7. Miss Greenwood, who represents the appellant, in her written submissions makes no concession as to whether or not the Tribunal has jurisdiction and contends that it has on the basis that the Tribunal accepted jurisdiction and the respondent seemingly did not object. Mr Duffy, who represents the respondent, invited me to find that the Tribunal does not have jurisdiction by reason of the certification that had been applied. In general terms, as he indicated, challenge to the certification normally proceeds by way of judicial review rather than by substantive hearing of the appeal before the First-tier Tribunal.
8. How the matter came to reach a hearing stage in the First tier Tribunal, is far from clear from the papers, but I am in no doubt that in this case there was no jurisdiction for the Tribunal to have entertained the appeal and consequently the decision should be set aside as a nullity.
9. In any event, even on the substantive merit of the decision Mr Duffy concedes that there is a conspicuous element of unfairness in permitting the decision to stand. In brief terms the appellant was at the material time in custody. He had sought an adjournment of his case because he was unable to attend but had not indicated in terms that he was in custody. He had engaged a firm of solicitors who no longer were acting and a further firm of solicitors purported to act. The Judge in the determination gave anxious consideration to the matter of adjournment. Indeed, both solicitors were consulted, the latter solicitors giving the indication that they were without instructions. Nobody seemed to appreciate that the appellant was in custody and therefore took it to be that he was on bail but not co-operating in the progress of his appeal, which was far from the case. Although no criticism can be attached to the Judge in refusing the adjournment on the basis of the facts that were then

presented, it is clear that those facts were misunderstood and that the reality was otherwise the case. It is important that justice is not only done but seen to be done and in those circumstances, regardless of any other submissions which Miss Greenwood made in her skeleton argument, Mr Duffy concedes that the decision should not stand.

10. For those reasons also the decision of the First tier Tribunal Judge is set aside.
11. The future conduct of the matter was then considered. So far as the certification that has been applied that has been the subject of criticism by the Supreme Court in **Kiarie [2017] UKSC 42**. In those circumstances Mr Duffy applied to withdraw both of the relevant decisions which were the subject of appeal, namely decisions of 4th April and 25th April 2016. I granted that permission.
12. In those circumstances there is no longer a decision upon which to found a valid appeal before the Tribunal (whether First-tier or Upper Tribunal). It will be for the Secretary of state to remake her decision. In those circumstances, following the promulgation of this decision the file may be closed.
13. No anonymity direction is made.

Signed



Date 3 August 2017

Upper Tribunal Judge King TD