



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

Appeal Number: IA/01704/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 25 July 2017**

**Decision &  
Promulgated  
On 21 August 2017**

**Reasons**

**Before**

**MR C M G OCKELTON, VICE PRESIDENT  
UPPER TRIBUNAL JUDGE COKER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**AMIT ALOYSH MACWAN  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr T Wilding, Home Office Presenting Officer  
For the Respondent: No appearance

**DECISION AND REASONS**

1. The appellant is Amit Aloysh Macwan. The appellant to the Upper Tribunal is the Secretary of State and we shall refer to the former as “the claimant” and the latter as “the Secretary of State”.

2. In a decision relating to the claimant issued on 17 December 2015 Judge Pullig who was dealing with it in the First-tier Tribunal remarked "This appeal is fraught with difficulty". In the subsequent eighteen months the circumstances of the claimant appear to have become even more difficult to understand. He is unrepresented before us. We are grateful to Mr Wilding for giving us some indication of the history of the claimant's various claims.
3. The claimant had been in the United Kingdom for a considerable period of time when he left the United Kingdom on 26 May 2016. We mark those facts at the beginning of this judgment because the latter of them is a crucial one in relation to this appeal and also the claimant's previous history.
4. Whilst he was in the United Kingdom, on 22 September 2014 the Secretary of State made a decision under Section 10 of the Immigration and Asylum Act 1999 on the basis that he had obtained leave by deception. The effect of that under Section 10(8) was that when the notice was given on 26 September 2014 the claimant's leave was invalidated. He was thus from that moment in the United Kingdom as a person without leave. The decision carried a right of appeal exercisable only from outside the United Kingdom. It appears that the claimant attempted to obtain judicial review of the decision under Section 10 asserting that he should be granted an in country right of appeal. That judicial review appears to have failed. Certainly we have seen nothing to suggest the contrary. There is reference in Judge Pullig's determination to an assertion that the reason why the appeal came before Judge Pullig so late was that time had been spent in pursuing the judicial review.
5. Following the failure of the judicial review, the claimant appealed to the First-tier Tribunal against the Section 10 decision. He was not at that stage outside the United Kingdom. It therefore follows that (as we can say at any rate with the benefit of hindsight) he had no exercisable right of appeal and had not exercised the right of appeal that he had, that appeal being limited to an appeal from outside the country.
6. Judge Pullig set out what he believed to be the nature of the decision under appeal before him, appears not to have his attention drawn to the fact that a decision of that nature carried an appeal only from abroad, but held that the appeal before him was not properly constituted because the claimant had failed to serve with his notice of appeal the notice of decision as required by the Rules. As is clear from the judge's decision, he was not prepared to determine the appeal merely on the evidence of the claimant about what the decision had been and what the reasons for it had been, when it was (as the judge noted) clear that the claimant had had the decision and had, despite the requirements of the Rules, and a further direction served on him, failed to serve the decision and the reasons for it on the Tribunal. The judge therefore concluded that there was no valid appeal before him. The claimant's attempt to constitute the appeal by putting in a notice of appeal without the notice of decision having

therefore not amounted to an appeal, he noted that it might be that the claimant would attempt to make a properly constituted appeal with a notice of decision and urged any Duty Judge dealing with such an out of time appeal, as it then would be, to extend time for the purpose.

7. At that point we must leave the proceedings in that appeal, or purported appeal, and note that four days after the Section 10 decision the claimant had sought leave to remain as the dependant of his wife who was here as a Tier 4 Student. That application was made on 30 September 2014. It will be clear that at that time the claimant had no leave because following the service of the Section 10 decision, on 26 September, four days earlier, his leave had been invalidated. The Secretary of State waited until 14 March 2016 to make her decision on that application. On that date she made a decision refusing further leave and asserting in the notice of decision that the claimant had a right of appeal against it. It is that appeal which is before us today.
8. Meanwhile, the claimant had through his solicitors appealed to the Upper Tribunal against Judge Pullig's decision deciding that he had not properly constituted his appeal to the First-tier Tribunal against the Section 10 decision. In a decision sent out on 11 October 2016 following a hearing on 24 August 2016, the Upper Tribunal, constituted with Upper Tribunal Judge Smith and Deputy Upper Tribunal Judge Davey, determined that Judge Pullig had erred in law. He should have appreciated that the claimant had an appeal against the Section 10 decision only from outside the United Kingdom and should, therefore, have found that there was no valid appeal before him for that reason, rather than for the reason that he did.
9. By 24 August 2016 however, as we have already noted, the claimant had left the United Kingdom and for that reason the Upper Tribunal determined apparently that the appeal before Judge Pullig had, by the time of the decision of the Upper Tribunal, been abandoned by the claimant's departure from the United Kingdom. We have to say that we have some difficulty in understanding the precise reasoning of the Upper Tribunal on that occasion: because if the claimant had no right of appeal exercisable from in the United Kingdom, the appeal that he had attempted to lodge by appealing from within the United Kingdom could not be abandoned by his departure. But in any event the Upper Tribunal's decision is important. It records formally the claimant's departure from the United Kingdom; secondly, that taking it with the decision of Judge Pullig, there appear to be at least three reasons why there was no jurisdiction to hear the claimant's appeal against the Section 10 decision, the first being that he had not constituted it properly, and the second being that there was a right of appeal only from outside the United Kingdom; and the third being that if either of those two reasons was wrong, he had departed the United Kingdom whilst his appeal was pending.
10. That decision has been brought to our attention by Mr Wilding today in order to support part of the Secretary of State's grounds of appeal in relation to the Tier 4 dependant decision. That appeal was dealt with on

the papers by Judge Graves in July 2016. Judge Graves was unaware that by then the claimant had left the United Kingdom; and the Secretary of State's ground of appeal is that instead of allowing the appeal as he did, Judge Graves should have recognised that the appeal had been abandoned by the claimant leaving the United Kingdom after lodging his notice of appeal on 4 March 2016 and whilst it was still pending.

11. There is however a further difficulty because, as we have noted, at the time that the claimant made his application for leave as a Tier 4 dependant, he had no leave. It therefore follows that the decision refusing him leave was not one which had as a result that he had no leave to be in the United Kingdom. The reason why he had no leave to be in the United Kingdom was that his existing leave had been invalidated four days before he made the application. There was therefore, in this case, no "immigration decision": the decision against which he appealed (the decision refusing him further leave) was not one which carried a right of appeal of any sort. If it had done, there is no doubt that the claimant had left the United Kingdom; and it follows that in this case too there was no jurisdiction to deal with his appeal, let alone to allow it.
12. So far as this appeal is concerned, we shall therefore find that Judge Graves erred in law. We set aside his decision and substitute a decision dismissing the appeal for want of jurisdiction. That however is not sufficient to deal wholly with this complicated case. After Judge Pullig's decision it appears that solicitors acting for the claimant attempted some time in January 2016 to make a further appeal to the First-tier Tribunal, this time no doubt attempting properly to constitute such an appeal. It appears also that the First-tier Tribunal replied saying that given the terms of Judge Pullig's decision, the appropriate procedure would be to appeal against it to the Upper Tribunal. They therefore made an application, permission was granted and that is how the matter came before Judges Smith and Davey. That appears to have been an error of administration. Given the terms of Judge Pullig's decision, it is perfectly clear that there had, as yet, been no valid appeal to the First-tier Tribunal in Judge Pullig's view and that the appropriate course of action was indeed for the claimant, if he thought it right to do so, to appeal, exercising any right of appeal that he had, and complying with the requirements of the Rules in doing so.
13. However, it is clear from the solicitors' letter that that correspondence was all dealt with before the claimant's departure on 26 May 2016. It therefore follows that whatever notice of appeal against the Section 10 decision was put in, in January or February 2016, it was a notice which purported to exercise a right of appeal which was not yet exercisable because the appellant was still in the United Kingdom. He had a right of appeal which he could exercise within the 28 days after he left the United Kingdom on 26 May 2016, but he does not ever appear to have exercised that right. It therefore follows, as we understand the position in total, that (i) so far as the section 10 decision is concerned, the claimant has never exercised the out of country right of appeal which he had, and (ii) so far as the present

appeal is concerned the claimant never had a right of appeal, but in any event (iii) any appeals that he did manage properly to constitute whilst in the United Kingdom, have been abandoned by his departure.

14. The only other issue to which we would refer is this: the grounds of appeal before this Tribunal assert as follows. The judge allowed this appeal against a Tier 4 dependent refusal on the papers. The judge found the ETS deception had not been made out because he had no evidence of it. However, there was plenty of evidence of that deception in the Home Office bundle which was prepared on 14 March 2016 and was served on the IAC. That is one of the grounds upon which permission was granted by Judge Holmes on 30 December 2016, over six months ago. The grounds of appeal are signed by a Presenting Officer. As Mr Wilding has very frankly told us there does not appear to be any factual basis for the assertion made in that ground. A bundle was indeed prepared, but it does not appear that it was served on the IAC, and indeed our file does not reveal it. It is no criticism of Mr Wilding to say that the assertion should not have been made, and having been made, should have been withdrawn before today. It is unfortunate if the Secretary of State is on record as making an assertion of fact in the context of an argument of an error of law when the assertion of fact cannot be substantiated.
15. For the reasons we have given however, that further error makes no difference in the case of this appeal, which is dismissed for the reasons we have given.
16. No anonymity direction is made.

C. M. G. OCKELTON  
VICE PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER  
Date: 28 July 2017