



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

Appeal Number: OA/11063/2013

THE IMMIGRATION ACTS

Heard at Field House

On 4 June 2014

**Determination
Promulgated**

On 5 June 2014

Before

UPPER TRIBUNAL JUDGE PITT

Between

MOHAMED CHOUIKHI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation

For the Respondent: Mr Saunders, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of France and his date of birth is 1 August 1983.
2. The appellant appeals against the decision of First-tier Tribunal Judge Davey who in a determination promulgated on 26 March 2014 refused his appeal against the respondent's decision dated 20 May 2013 to refuse

entry following Regulations 11 and 19 of the Immigration (European Economic Area) Regulations 2006 (“the EEA Regulations”).

3. The background to this matter is that on 11 September 2012 the appellant was in a car driving from France to the UK. One of his passengers was found to have a false identify document and on 12 September 2012 the appellant was served with a notice refusing entry on the basis that he had attempted to facilitate an illegal entry. The appellant does not dispute that matter.
4. It seems that the appellant continued to travel back and forth between France and the UK but what is certain is that when he attempted to enter the UK on 20 May 2013 he was again refused entry under the EEA Regulations, the respondent maintaining that at the same time as the refusal of 12 September 2012 he had been made subject to a non-conductive ban of 12 months which remained in force until 11 September 2013.
5. The appellant appealed that decision and it has always been his case that the ban had not been put in place and even if it was he was never informed of it.
6. Judge Davey found against the appellant at [12], stating that because “the Appellant accepts he did pursue to appeal the 12 September 2012 decision, it seems unarguable that the ban was in place.”
7. In fact, the appellant’s evidence before the First-tier Tribunal was that he had filled in the appeal forms in 2012 but decided not to pursue the appeal and there is certainly no other evidence before me to suggest that a substantive appeal was actually lodged. In addition, even had there been a valid appeal made at that time, the appeal grounds, as accepted by Judge Davey at [4] and [12] did not say anything about challenging a ban but merely questioned the refusal of leave to enter.
8. Mr Saunders also readily conceded for the respondent that was nothing in the documents before me as to the ban ever having been in place and that he had been unable to find anything reliable to suggest that it had.
9. Where those matters were so, it was my view that the appellant’s ground of appeal, that Judge Davey erred in finding that the ban had been in force and that the refusal of 20 May 2013 was lawful because of the ban, had merit and showed an error on a point of law such that the decision of Judge Davey had to be set aside and re-made.
10. I proceeded to re-make the appeal. Mr Saunders did not argue against the obvious conclusion that where there is no evidence at all from the respondent other than the assertion in the refusal of 20 May 2013 that the ban was ever properly made against the appellant, the refusal of leave to enter was not lawful and that the appeal should be allowed.

11. When I announced this decision Mr Chouikhi asked whether it would prevent him being taken aside for questioning when he travels between the UK and France as he often does. I indicated that I did not have any jurisdiction in that regard but that it was open to him to raise my settled conclusion that it has not been shown that a ban was ever in force against him with immigration officers who may seek to question him as they are entitled to by law.

Decision

12. The decision of the First-tier Tribunal disclosed an error on a point of law such that it is set aside.

13. I re-make the appeal by allowing it under the EEA Regulations.

Signed: 
Upper Tribunal Judge Pitt

Date: 4 June 2014