



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/11203/2014

THE IMMIGRATION ACTS

Heard at Field House
On 24 March 2015

Decision & Reasons Promulgated
On 31 March 2015

Before

MR JUSTICE CRANSTON
DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

AKRAMUL KARIM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Richardson, Counsel, instructed by Gulbenkian Andonian Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. On 10 February 2014, the Secretary of State refused to grant the appellant leave to remain, following an application made on his behalf on 27 December 2013. In a decision promulgated on 28 November 2014, First-tier Tribunal Judge Coutts (“the

judge”) purported to decide the appellant's appeal against that decision. The appellant advanced a case that his removal to Bangladesh, the country of his nationality, would breach his rights under Articles 3 and 8 of the Human Rights Convention, in the light of his mental ill health and the risk of suicide on return. The judge dismissed the appeal.

2. In an application for permission to appeal, it was contended that the judge erred in failing to properly apply D, a decision of the Grand Chamber and in failing to properly assess the risk of suicide. Permission to appeal was granted on 21 January 2015. In a brief Rule 24 response, the Secretary of State opposed the appeal on the basis that the First-tier Tribunal Judge directed himself appropriately in relation to the appellant's human rights.
3. We were told by Mr Richardson that it appeared, in the light of a conversation with Mr Tufan, that a jurisdictional point arose which was not taken before the First-tier Tribunal. The Secretary of State's decision, served on the appellant, was a refusal to grant leave which was not, of itself, an “immigration decision” falling within section 82(2) of the Nationality, Asylum and Immigration 2002 (“the 2002 Act”) and so was incapable of giving rise to an appeal. The basis of the decision was that the application for leave was made on 27 December 2013, after expiry of the appellant's extant leave on 8 November that year, so that he had no leave at the time of the application. If so, there was no valid appeal before the First-tier Tribunal and no valid appeal before the Upper Tribunal.
4. Mr Tufan said that the case was on all fours with Virk and Others [2013] EWCA Civ 652. In that case, applications for leave to remain were made after expiry of the claimants' current leave. The point was not taken before the First-tier Tribunal, which dismissed the appeals. In the Upper Tribunal, the point having emerged, the appeals were dismissed as the First-tier Tribunal acted without jurisdiction in entertaining them.
5. Mr Tufan was able to confirm that the Secretary of State held no removal decision on file. The appellant remained without any leave but a removal decision might be expected in due course, which would give rise to an appeal.
6. In Virk and Others, the Court of Appeal held that the jurisdictional point was properly open to be taken by the Upper Tribunal, which was entitled to rely on the First-tier Tribunal's lack of jurisdiction to decide the appeal and dismiss it. We take a similar course.
7. As the decision made by the Secretary of State was not an “immigration decision” falling within section 82(2) of the 2002 Act, the First-tier Tribunal lacked jurisdiction to entertain an appeal against it. That point having been raised before us, we dismiss the appeal.

Notice of Decision

The appeal is dismissed

No anonymity direction has been applied for and none is made.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed the appeal and there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell