



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

Appeal Number: DA/00174/2015

THE IMMIGRATION ACTS

**Heard at Field House
6 July 2016**

**Decision and Reasons
29 July 2016**

Before

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

Between

EMIL ADAM WADOLKOWSKI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Toal, instructed by Wilson Solicitors.

For the Respondent: Mr P Deller, Senior Home Office Presenting Officer.

NOTICE AND DIRECTIONS

1. The appeal before the Tribunal is against a decision of Judge Onoufriou in the First-tier Tribunal. The judge dismissed, or purported to dismiss, an appeal by the appellant against a decision to make a deportation order against him on 23 April 2015.
2. The decisions made by the Secretary of State against the appellant had been the subject of judicial review in the Upper Tribunal. The substantive application for judicial review was successful, and the Tribunal quashed what it described as "the impugned decisions". The Secretary of State's

position is that that left the decision to make a deportation order unimpaired, as it had not been the subject of the judicial review proceedings.

3. Before us, Mr Deller, with his customary persuasive elegance, explained that point to us, and, on it being drawn to his attention that there appeared to be some defects in the notice of decision, reminded us that it was open to the appellant to waive any such defects by putting in a notice of appeal against the decision. As we said at the hearing, however, it is difficult to see that that happened in this case. For the unrepresented appellant, invited to attach to his notice of appeal the decision against which he was appealing, attached not a decision which was capable of being appealed, but, instead, the deportation order signed against him on 23 April 2015. It did and does not appear to us that it would be proper to regard the appellant as having waived his right to be notified, in accordance with the regulations, of the decision against which he had a right of appeal.
4. The Secretary of State's decision-making process in this case has already been the subject of criticism by the Upper Tribunal in the judicial review proceedings, the President referring to "a public law misdemeanour of some gravity". As we indicated at the hearing, the present appeal falls in our judgement to be allowed and will be allowed unless the Secretary of State withdraws the decision against which Judge Onoufriou purported to hear an appeal. That will not, of course, prevent her from making an appropriately-motivated decision in the future.
5. In the circumstances, we directed orally that the Secretary of State notify the Tribunal within 21 days of the date of this determination whether she has withdrawn the decision in question. By letter dated 22 July Mr Deller has indicated that the decision is withdrawn.
6. The appellant's appeal is now allowed on the ground that there is no decision against which to appeal.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 25 July 2016