



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/06941/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 24<sup>th</sup> November 2017

Decision & Reasons Promulgated  
On 8<sup>th</sup> December 2017

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

EKIN CAN AKTAS  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr R Claire, Counsel instructed by Ashton Ross Law

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Turkey born on 24<sup>th</sup> March 1989. His appeal against the refusal of indefinite leave to remain under the European Community Association Agreement (ECAA) was allowed by First-tier Tribunal Judge S Taylor on 17<sup>th</sup> November 2016.
2. On 24<sup>th</sup> July 2017, I found that there was an error of law in the decision of the First-tier Tribunal and I set the decision aside. The judge erred in law in failing to apply

sections 82 and 84 of the Nationality, Immigration and Asylum Act 2002 as amended (6<sup>th</sup> April 2015). The judge reviewed the decision to refuse indefinite leave to remain under paragraph 4 of HC 510 on the basis that it was not in accordance with the Immigration Rules. However, the appeal was limited to an appeal on human rights grounds.

3. I directed that the first point to address at the resumed hearing was whether there was a right of appeal to the Tribunal under section 82 and that skeleton arguments should be filed and served seven days in advance of the date of hearing. Neither party complied with those directions.
4. At the resumed hearing Mr Melvin submitted a skeleton argument and submitted there was no right of appeal to the Tribunal. Mr Claire accepted that position and did not seek to persuade me otherwise. He accepted that any challenge was by way of judicial review. Mr Melvin submitted that a further application may succeed since the 24 month period would no longer apply.
5. The Respondent accepted that there was an error in the refusal decision stating that there was a right of appeal. The First-tier Tribunal erred in law in failing to dismiss the appeal for want of jurisdiction. The Appellant was not at fault in pursuing his appeal. The point was not taken until the error of law hearing before the Upper Tribunal. The parties did not seek to argue the point at the resumed hearing.
6. The Appellant had not made a human rights claim and the Respondent had not refused a human rights claim. There was no right of appeal under section 82 and the appeal was dismissed for want of jurisdiction.

### **Notice of Decision**

The Appellant's appeal against the refusal of indefinite leave to remain under the ECAA is dismissed for want of jurisdiction.

No anonymity direction is made.

*J Frances*

Signed

Date: 8 December 2017

Upper Tribunal Judge Frances