



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/15163/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 27 June 2018

Decision & Reasons Promulgated  
On 3 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JABER AHMED  
(ANONYMITY DIRECTION NOT MADE)

Claimant

**Representation:**

For the Appellant:

Ms Z Ahmad, Home Office Presenting Officer

For the Claimant:

Mr M K Mustafa, Solicitor instructed by Kalam Solicitors

**DECISION AND REASONS RE ERROR OF LAW**

1. The Secretary of State ("SSHD") is the appellant in this matter and I shall refer to Mr Ahmed as "the Claimant." The SSHD appeals against the decision of the First-tier Tribunal (Judge Ripley) ("FtT") promulgated on 27 November 2017 in which the Claimant's human rights appeal was allowed.

**FtT decision**

2. In a decision and reasons the FtT considered whether or not the Secretary of State had properly served on the Claimant a notice dated 25 June 2014 informing him that

his leave was curtailed. That notice was sent to the Claimant using the email address provided in his entry clearance application form and which he claimed he did not receive.

3. The FtT considered the relevant provisions as regards service which are set out at [13]-[14]. The FtT referred to Article 8ZA of the Immigration (Leave to Enter and Remain) Order 2000(as amended), and further considered Home Office Guidance dated June 2014 relevant to the service of curtailment of leave notices. The FtT also referred to the decision of **SF & Others (guidance, post-2014 Act) Albania [2017] UKUT 120** [18].
4. The issue was whether or not the Claimant had been validly served with the curtailment notice and this had a material impact on the lawfulness and length of residence in the UK. The FtT found that there was a postal address available to the SSHD [19]. The FtT also took into account that the SSHD had not contested the JR proceedings. There was no evidence of the email relied on [20]. The FtT found that the Claimant did have leave when he made his application in 2014.

#### **Grounds for permission to appeal**

5. In grounds of appeal the Secretary of State contended that the FtT erred by finding that the service by email was not lawful. Permission was granted by First-tier Tribunal Judge Cruthers on 18 April 2018. Judge Cruthers states:

“2. The crux of grounds on which the Secretary of State seeks permission to appeal is a complaint that the judge was wrong to find in the appellant’s favour on the question of whether or not a curtailment decision had been validly served on the appellant in 2014 [20]. The respondent says that this is important because the judge’s reasoning relies on her assessment that the appellant still had leave to remain when he made his index application in 2014. [20].

3. In my assessment, it is arguable, as per the grounds, that the judge may have been wrong to find that the curtailment decision in question had not been validly served on the appellant. And this question may well determine the ultimate outcome of this appeal – as per paragraph 4 of the grounds. Overall, there is sufficient in the grounds to make a grant of permission appropriate.”

#### **Error of Law Hearing**

##### **Submissions**

6. At the hearing before me Ms Ahmad submitted the GCID record which on page 1 showed an address for the claimant at 20 Hedges Way and on page 2 she referred to the entry dated 25 June 2014 which stated, “no UK address available for the migrant, so unable to serve decision to a postal address”. This evidence was not before the FtT.

7. She submitted that it was clear therefore that the Secretary of State had considered whether or not there was an address on file and taken the view that email was the appropriate way of service. This was lawful in accordance with the 2000 Order.
8. Mr Mustafa submitted that the finding that the Claimant had extant leave was not a material error of law. The FtT interpreted the order with the aid of the curtailment guidance which was pertinent at that time in 2014 because the order was silent on the means by which a curtailment decision should be served. The FtT set out the relevant points in the guidance in its decision. It clearly stated that there was an order of priority and that it was preferable for service to be by post. The email address was third in a list of preferences. The FtT did consider that the SSHD asserted that there was no UK postal address. Reference was made to the Claimant's application form (at B14) where it was clear that the Claimant had provided a postal address. Accordingly the Guidance mandates in those circumstances that such an order must be served at that address.
9. As regards the GCID, Mr Mustafa submitted that as no application had been made under Rule 15 of the UT Procedure Rules the Secretary of State had failed to make a proper application to admit that new evidence and also failed to give cogent reasons why that evidence was not before the FtT.

### **Discussion and Decisions**

10. Having heard the submissions made by both parties I decided that there was no material error of law in the decision which shall stand. The FtT fully considered the issues of service with reference to the 2000 order and to the specific Guidance issued in 2014 as to service of curtailment notices. I am satisfied that the finding she made in this regard was clearly open to her on the available evidence. Accordingly, there is no basis on which it can be said that the human rights decision made by the FtT was an error of law.

### **Notice of Decision**

11. I find no material error of law in this decision which shall stand.

Signed

Date 30.6.2018

GA Black

Deputy Upper Tribunal Judge G A Black

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award.

Signed  
GA Black

Date 30.6.2018

Deputy Upper Tribunal Judge G A Black