



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/15541/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 19 July 2018  
Prepared 19 July 2018

Decision & Reasons Promulgated  
On 11 September 2018

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**LBM**

**(ANONYMITY DIRECTION CONTINUED)**

Respondent

**Representation:**

For the Appellant: Mr D Clark

For the Respondent: Mr D Jones, counsel, instructed through Garden Court Chambers

**DECISION AND REASONS**

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.
2. The Claimant, a national of the Republic of South Africa, date of birth 21 August 1952  
Appealed against the decision to refuse his application made on 30 July 2015 for

indefinite leave to remain. The refusal by the Secretary of State on 6 June 2016 was the subject of an Appeal which came before First-tier Tribunal Judge Buckwell who on 22 November 2017 dismissed the Appeal.

3. Permission to Appeal was given in the Upper Tribunal on 7 March 2018 and, by the grounds submitted drafted by Mr I Jarvis of the specialist Appeals team dated 23 April 2018, the issue was taken that in fact the First-tier Tribunal never had jurisdiction to determine the Appeal. This led to further directions in May 2018 by the Upper Tribunal and led to competing written submissions on the issue of jurisdiction and costs.
4. At the hearing before me it became clear that it was accepted by the parties that the First-tier Tribunal did not have jurisdiction to consider the Appeal although it is accepted that the Upper Tribunal has jurisdiction under the Tribunals, Courts and Enforcement Act 2007 to consider the matter if the issue was raised. It was clear that the powers of the Upper Tribunal in these circumstances enable the Upper Tribunal to set aside the decision and also within the terms of that exercise, if satisfied that there is an error of law, may make any decision which the first Tribunal could make and may make such findings of fact as it considers appropriate. Given the position is that the First-tier Tribunal has no jurisdiction there was a certain circuitry of consequences in that the matter needed to be determined again by the Secretary of State who seeks to or would seek to withdraw the decision in any event.
5. Mr Jones urged me to make findings of fact appropriate at this stage bearing in mind the matter has got to be wholly looked at again by the Secretary of State. He invited me to make favourable remarks in favour of the Claimant on the basis that this may have an effect upon the Secretary of State's fresh consideration of this matter.
6. It is clear from the decision of the First-tier Tribunal that the Judge formed no adverse view upon the reliability, credibility or integrity of the Claimant. It was clear and it does not need to be extensively repeated that the Claimant has been making a

significant contribution to the United Kingdom in terms of the type of work he undertakes. The fact is that the Secretary of State has to deal with the application again and is not going to be fettered by any findings of fact that I make. Bearing in mind the point is that there is really no jurisdiction to deal with the decision: As a fresh decision is to be made.

7. For these reasons I conclude it is not appropriate in this case to make findings of fact. I leave the Secretary of State with a position which might be described as 'to dine à la carte'. For the above reasons therefore I find that there was an error of law. The Original Tribunal's decision cannot stand.
8. The decision of the First-tier Tribunal is therefore set aside. The matter will have to be looked at again by the Secretary of State. To this extent the Appeal fails but without prejudice to any of the arguments being raised by the Claimant. So far as costs are concerned that is costs in the Upper Tribunal those are to be the matter of submission and a further and different decision.

**DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

**DECISION**

The Appeal is dismissed.

Signed

Date 20 August 2018

Deputy Upper Tribunal Judge Davey