



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

Appeal Number: DA/01576/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision and Reasons**

**On 22 April 2015**

**Promulgated**

**On 27 July 2015**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**AAMIR SALEEM**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION ON ABANDONMENT**

1. The appellant's appeal against the decision of the respondent dated 17 July 2013 to make a deportation order against him pursuant to the automatic deportation provisions of the UK Borders Act 2007 was dismissed by a judge of the First-tier Tribunal after a hearing on 20 August 2014. Permission to appeal against the decision of the First-tier Tribunal was granted by a judge of the Upper Tribunal on 11 February 2015.
2. On 22 April 2015 there was a hearing before me pursuant to the grant of permission. At the conclusion of that hearing I reserved my decision in relation to whether there was an error of law in the decision of the

First-tier Tribunal, and if so whether the decision was to be set aside. I indicated to the parties that if I found that the First-tier Tribunal had erred in law such that the decision was to be set aside, there would be a further hearing before any re-making of the decision in the Upper Tribunal.

3. Subsequent to the hearing, on 11 June 2015 the Upper Tribunal was notified by the respondent that the appellant had 'signed a disclaimer' indicating his intention to return to Pakistan. A letter from The Home Office to the Immigration Enforcement Department of the Home Office was provided which repeated the same. A pro forma notice entitled "Disclaimer in a Deportation Case" was also provided, signed by the appellant and dated 5 June 2015. A box marked with an 'X' states:

"I am aware that I have an outstanding right of appeal against my deportation but I wish nevertheless to leave the United Kingdom and waive this appeal right."

4. On 16 June 2015, at my request, the appellant's representatives were contacted by the Upper Tribunal's administration seeking confirmation that the appellant wished to abandon his appeal. The reply from the appellant's representatives, Good Advice UK, dated 22 June 2015, states that the appellant had elected voluntarily to return to Pakistan and that the flight was scheduled for 26 June 2015, but that he does not wish to abandon his appeal. The Upper Tribunal was then informed by the respondent that the appellant had been "removed" from the UK on 25 June 2015.
5. Directions were then sent to the parties on 3 July 2015 requiring them to indicate whether they accept that by reason of the appellant having left the UK his appeal is to be treated as abandoned by virtue of section 104(4) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").
6. The appellant's representatives responded on 7 July repeating that the appellant did not wish to abandon his appeal and stating that it was not accepted that the appeal should be treated as abandoned. The respondent replied on 14 July expressing the view that the appeal was to be so treated. Neither party made any detailed submissions on the point.
7. S.104(4) of the 2002 Act provides that:

"An appeal under section 82(1) [of the 2002 Act] brought by a person while he is in the United Kingdom shall be treated as abandoned if the appellant leaves the United Kingdom."

8. However, Schedule 9, paragraph 47 of the Immigration Act 2014 amends s.104(4) of the 2002 Act by deleting it but with saving provisions set out in articles 9-11 of the Immigration Act 2014 (Commencement No.3, Transitional and Saving Provisions) Order 2014,

S.I. 2014 No.2771. The effect of the savings provisions is that s.104(4) remains in force.

9. Although there was a hearing before the Upper Tribunal on 22 April 2015, there has been no determination of the appeal. The appeal is therefore still pending (s.104(1)-(2) of the 2002 Act).
10. The result is that by reason of the appellant having left the UK his appeal is to be treated as abandoned by virtue of s.104(4). The Upper Tribunal has no jurisdiction to do anything other than to treat the appeal as abandoned.

**Decision**

The appeal is abandoned by virtue of s.104(4) of the 2002 Act.

Upper Tribunal Judge Kopieczek

23 July 2015