



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

Appeal Number: IA/20206/2014

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice

**Decision & Reasons
Promulgated**

On 19 January 2015

On 29 January 2015

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR JAGJIT SINGH
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Whitwell

For the Respondent: Ms A Oji

DECISION AND REASONS - NO VALID APPEAL

1. For ease of reference purposes I refer to the parties as they were in the First-tier Tribunal so that Mr Singh is hereafter referred to as the appellant and the Secretary of State for the Home Department as the respondent.
2. The appellant is a citizen of India who was born on 7 November 1985. According to a decision letter of the respondent dated 2 May 2014 the appellant made an application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under the points-based system. That

application was dated 17 April 2013. In that same letter the appellant was informed that his application was refused under one of the general grounds of refusal (paragraph 322(1A)) because he provided a Test of English for International Communication (TOEIC) certificate in support of his application as evidence of his English language ability. However, after verification with the awarding body it was confirmed that he had used deception during the examination process. As the examination process used to assess his English language ability was confirmed to be not genuine, his Tier 4 sponsor's assessment did not meet the requirements of Appendix A and Appendix O of the Immigration Rules. As it had been decided that he did not meet the requirements of the Rules no points had been awarded under "Attributes - Confirmation of Acceptance for Studies (CAS)". The refusal was made under paragraphs 245ZX(a) of the Immigration Rules.

3. Within the decision letter of 2 May 2014 it is stated:-

"I have considered all the information available to me and I am satisfied that Jagjit Singh is liable to administrative removal as defined in Section 10 of the Immigration and Asylum Act 1999 on the basis that during an administrative review process, ETS (Educational Testing Service) have confirmed that your test obtained was through deception. We are therefore satisfied that you have submitted a document in support of your application for the purpose of obtaining leave by deception.

I have also considered whether it is appropriate to administratively remove Jagjit Singh and, having taken into account all of the facts available to me now, I am satisfied that the prejudice he may suffer is not such that is unfair to serve him with form IS151A Notice to a person liable to removal."

4. There then appears in the bundle a copy of form IS151A in which the appellant's name appears but there is no signature or date given. That form is headed "Notice to a person liable to removal". There also appears in the file a copy of form IS151A part 2 "Decision to remove an illegal entrant/person subject to administrative removal under Section 10 of the Immigration and Asylum Act 1999". Again this form is addressed to the appellant but contains no date of service, signature or date of signature. It is not clear to me whether those forms ever were signed and completed. If they were they are not in the file. It may be that the copies in the court bundle are simply incomplete copies of the original.
5. What I am able to ascertain from looking at the file and the grounds of appeal is that no objection has been taken by the appellant raising any matter in relation to the points made in the previous paragraph. I anticipate that had the documents not been properly served this would have been a matter raised a long time before now.
6. The appeal having been lodged, the matter came before First-tier Tribunal Judge T Jones. By a decision dated 13 May 2014 he took the preliminary issue point as to whether this is a valid appeal. This was dealt with on the papers and without reference to either party. He noted as follows:-

- “2. The appellant’s grounds of appeal aver to the respondent’s decision being wrong and do not address the issue concerning the right of appeal arising only out of country. There is no evidence or suggestion of that a prior application has been made to or rejected by the respondent concerning human rights. Therefore I do not find that Section 92(4) of the Nationality, Immigration and Asylum Act 2002 applies. There is no suggestion that this appellant is an EEA national or a dependant or family member of an EEA national, or that any other grounds of appeal are to be relied on.
3. However, on the face of this appeal, the appellant had at the time of application leave to remain. I am reminded of the decision in **CD (s.10 curtailment: right of appeal) India [2008] UKAIT 00085** which states that any decision that involves the invalidation of or de facto curtailment of leave gives rise (to) an in country right of appeal pursuant to Section 82(2)(e) NIAA 2002, whether or not the appellant has made a prior asylum or human rights claim.”
7. The file indicates that the judge’s decision was served on the appellant, his solicitors and the Presenting Officers’ Unit at Feltham, Middlesex. The respondent did not seek leave to appeal that decision and the matter proceeded to a hearing before First-tier Tribunal Judge G A Black who allowed the appeal in a decision promulgated on 22 September 2014. The judge referred to the preliminary issue decision and noted at paragraph 13 “At the start of the hearing both representatives confirmed that they had not received a copy of the determination by First-tier Tribunal Judge Jones”. The respondent’s representative indicated that she had intended to raise the question of jurisdiction (the right of appeal point) as a preliminary issue submitting that the appellant had no in country right of appeal. However, on being provided with a copy of the determination of Tribunal Judge Jones the representative conceded that a decision had been made in that regard. Paragraph 14 of the determination noted that after a short adjournment the representative did not renew her application that there was no jurisdiction to hear the appeal. I take it from that that she did not necessarily accept that there was jurisdiction to hear the appeal either.
8. The respondent sought permission to appeal that decision and permission to appeal was granted.
9. I received submissions from both parties and I have noted them and taken them into account.
10. Section 10 of the Immigration and Asylum Act 1999 provides, so far as is material:-
 - “(1) A person who is not a British citizen may be removed from the United Kingdom, in accordance with directions given by an Immigration Officer, if -

- (a) having only a limited leave to enter or remain, he does not observe a condition attached to the leave or remains beyond the time limited by the leave;
- (b) he uses deception in seeking (whether successfully or not) leave to remain;

...

- (8) When a person is notified that a decision has been made to remove him in accordance with this Section, the notification invalidates any leave to enter or remain in the United Kingdom previously given to him."

11. Section 82 of the Nationality, Immigration and Asylum Act 2002 provides, so far as is material:-

"(1) Where an immigration decision is made in respect of a person he may appeal to the Tribunal.

(2) In this part, 'immigration decision' means -

...

(d) refusal to vary a person's leave to enter or remain in the United Kingdom if the result of the refusal is that the person has no leave to enter or remain,

...

(g) a decision that a person is to be removed from the United Kingdom by way of directions under Section 10(1) ... (b) ... of the Immigration and Asylum Act 1999 (removal of a person unlawfully in the United Kingdom),

...

(5) The right of appeal under Section (1) is subject to the exceptions and limitations specified in this part."

12. The "limitations" as they were at the material time set out in the 2002 Act include limitations as to the types of appeal which could be brought whilst remaining in the United Kingdom. Section 92 of the 2002 Act provides, so far as is material:-

"(1) A person may not appeal under Section 82(1) while he is in the United Kingdom unless his appeal is of a kind to which this Section applies.

(2) This Section applies to an appeal against an immigration decision of a kind specified in Section 82(2)(c), (d), (e), (f), (ha) and (j) ..."

13. The consequence of Section 92 of the 2002 Act is that an appeal against a removal decision under Section 10(1)(b) of the 1999 Act attracts only an out of country right of appeal, whereas a decision to refuse an application

to vary or extend an earlier grant of limited leave to remain attracts an in country right of appeal if the effect of that decision is that the person no longer has leave to remain.

14. A removal decision under Section 10(1)(b) of the 1999 Act has been made in this case. The appellant was given notice in the decision to remove him that he is entitled to appeal the decision under Section 82(1) of the NIA Act 2002, but only after he has left the United Kingdom.
15. It follows from what I have said above that I find that the appellant did not have a valid right of appeal and the First-tier Tribunal Judge on the preliminary issue point was wrong to decide otherwise. It appears to me to make no practical difference that the respondent did not seek to appeal the preliminary issue decision of that judge or that Judge G Black did not go behind that decision and maintained that this is a valid appeal. If the statutory regime dictated that there was no right of appeal in country then any number of decisions saying otherwise would not allow the appellant to succeed.
16. Put simply therefore there is no valid appeal and this document provides the decision in relation to that. I add only that **CD (s.10 curtailment: right of appeal) India [2008] UKAIT 00085** which Judge T Jones relied on is no longer good law. See **RK (Nepal) v Secretary of State for the Home Department [2009] EWCA Civ 359**: See also **R (On the application of Mohamed Bilal Jan) v Secretary of State for the Home Department [2014] UKUT 265**.
17. There is no need for an anonymity direction in this case and therefore I do not make one.

Notice of Decision

No valid appeal.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Pinkerton