



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

Appeal Number: IA/34792/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 16th April 2015**

**Decision & Reasons
Promulgated
On 21st May 2015**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ANSAR MAHMOOD
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr D Mills, Home Office Presenting Officer

For the Respondent: No appearance

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Atkinson made following a hearing at Bradford on 4th November 2014.

Background

2. The claimant is a citizen of Pakistan born on 30th January 1989. He arrived in the UK on 17th March 2011 with leave as a Tier 4 Student which was subsequently extended until 14th December 2014. On 23rd October 2013

he applied for leave to remain as a spouse but was refused on the grounds that he did not meet the suitability criteria. The Secretary of State believed that he had engaged in deception in obtaining an English language certificate from ETS in July 2012.

3. The judge found that the evidence relied upon by the Secretary of State was insufficient to discharge the burden of proof upon her to establish deception and allowed the appeal.
4. Prior to the hearing I was informed by the claimant's representatives that he had left the UK and that they had told the Secretary of State of his departure in February 2015.
5. The Immigration Act 2014, in Section 17(8) states that where an appellant brings an appeal from within the UK but leaves the UK before the appeal is finally determined the appeal is to be treated as abandoned unless the claim to which the appeal relates has been certified under Section 94(1) or (7) or Section 94B.
6. This mirrors the provisions in Section 104 of the Nationality, Immigration and Asylum Act 2002.
7. An appeal under Section 82(1) is not finally determined for this purpose while:
 - (a) an application for permission to appeal under Section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007 could be made or is awaiting determination;
 - (b) permission to appeal under either of those Sections has been granted and the appeal is awaiting determination, or
 - (c) an appeal has been remitted under Section 12 or 14 of that Act and is awaiting determination.
8. Accordingly, the claimant's appeal against the refusal by the Secretary of State to refuse his application for leave to remain is abandoned. It has not yet been finally determined because the Secretary of State exercised her right to challenge the First-tier Judge's determination and he left the UK whilst that challenge was pending, albeit that the exact date of his departure is unknown.

Notice of Decision

9. Appeal abandoned.
10. No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Taylor