



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

Appeal Number: IA289322015

THE IMMIGRATION ACTS

Heard at Field House

On 20 June 2017

**Decision & Reasons
Promulgated
On 23 June 2017**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**JAGMEET SINGH BRAR
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr I Jarvis, Senior Presenting Officer

For the Respondent: Mr T Uppal of Glen Solicitors

DECISION AND REASONS

(Delivered orally 20 June 2017)

1. The appellant before the Upper Tribunal is the Secretary of State for the Home Department ("SSHHD"), permission to appeal having been granted against a decision of First-tier Tribunal Judge Cohen which, in paragraph 14 onwards, is in the following terms: -

"In the light of my findings above, I find that the respondent's decision herein is not in accordance with the law and I therefore allow the appeal under the Immigration Rules to the limited extent indicated above. ...

Decision

The appeal is allowed under the Immigration Rules"

2. The SSHD appeals on the basis that the First-tier Tribunal did not have jurisdiction to determine the appeal on the grounds it did. I concur.
3. The background to this appeal is that Mr Brar's ("the claimant's") leave was curtailed such that it expired 60 days' after notice was given (i.e. on 17 March 2015). The intention of this was to provide the claimant with an opportunity to obtain documentation (a CAS) enabling him to make a further application for leave as a Tier 4 migrant. He was not able to obtain such documentation within the timeframe and made an application to the SSHD, on 16 March 2015, for a further 60 days leave in order to further pursue that avenue.
4. That application was refused by the SSHD in a decision of 29 July 2015. The decision it is said, and I do not have the whole decision before me, did not include the necessary information identifying to the claimant the existence of his right of appeal to the First-tier Tribunal. The claimant, nevertheless, quite properly lodged an appeal with the Tribunal and it was that appeal which was 'determined' by Judge Cohen.
5. Turning to the scope of the claimant's appeal.
6. It is uncontroversial that the SSHD's decision of 29 July was a decision to refuse to vary leave so that there was no leave remaining (an immigration decision pursuant to section 82(2)(d) of the Nationality, Immigration and Asylum Act 2002). Prima facie, the claimant had a right to appeal to the First-tier Tribunal against such decision.
7. One needs to take a step back in time, however, in order to ascertain the scope of such an appeal. Once again it is uncontroversial that the application made by the claimant which led to the decision under challenge was "*an application for leave to enter or remain in the United Kingdom for a purpose other than one for which entry or remaining is permitted in accordance with the Immigration Rules*". That this was the SSHD's view is identified in the decision letter itself. There is no immigration rule which permits leave for the purposes of obtaining the necessary documentation to facilitate the making of an application for Tier 4 leave.
8. As a consequence, and pursuant to sections 88(1), 88(2)(d) and 88(4) of the 2002 Act (as it was), the claimant was only entitled to bring an appeal on the grounds identified in sections 84(1)(b), (c) and (g) of the 2002 Act i.e. race relations, human rights and Refugee Convention grounds. Consequently, the First-tier Tribunal only had jurisdiction to determine the appeal on such grounds. In the instant case the claimant pursues 'human rights grounds'.
9. It is plain from paragraph 14 of the First-tier Tribunal's decision that it decided the appeal on grounds other than those set out in sections 84(1)(b), (c) and (g) of the 2002 Act. There was no jurisdiction for the First-tier Tribunal to determine the appeal on the basis that the SSHD's decision

was not in accordance with the law (s84(1)(e)) or that it was not in accordance with the Immigration Rules (section 84(1)(a)), and the First-tier Tribunal did not determine the human rights grounds before it.

10. It is agreed by the parties that the First-tier Tribunal's decision must therefore be set aside and, it seems to me, that the only fair course is for the appeal to be remitted to the First-tier Tribunal to be determined afresh. Although I do not direct the First-tier Tribunal as to the composition of the panel that should deal with this appeal, I see no reason why the matter should not be put back before Judge Cohen to complete the task that he ought to have completed on 21 November 2016.

Signed:



Upper Tribunal Judge O'Connor