Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/34887/2015

THE IMMIGRATION ACTS

Decided on the papers	**Decision & Reasons Promulgated**
On 29 January 2018	**On 30 January 2018**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MR JAYSINH BHUPAT KESHWALA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. This is the Appellant's appeal against the Respondent's decision dated 30 November 2015 refusing his claim to remain based on his family and private life in the UK. His appeal was dismissed by First-tier Tribunal Judge Pickup in a decision promulgated on 1 March 2017 ("the Decision").

2. The Appellant did not attend nor was he represented at the hearing before the First-tier Tribunal. The Judge noted at [3] of the Decision that the Appellant's human rights claim had been certified as clearly unfounded pursuant to section 94 Nationality, Immigration and Asylum Act 2002 ("section 94"). The Judge also went on at [9] to note that, as the claim had been certified under section 94, he had no jurisdiction to consider an appeal on human rights grounds.

3. Notwithstanding that (correct) self-direction, the Judge went on to make findings in the appeal on the basis that he understood this to be an appeal

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which pre-dated the coming into force of the changes brought about by the Immigration Act 2014. He therefore purported to dismiss the appeal "on immigration grounds".

4. As the Appellant points out in his grounds of appeal, this is not an appeal under the "saved provisions" preserved by the transitional arrangements under the Immigration Act 2014. Although the application to which the Respondent's decision responds was made before 6 April 2015, it was not an application to vary leave since the Appellant had no leave. Furthermore, the Respondent's decision is also the refusal of a human rights claim. Accordingly, the "saved provisions" could not apply. This is therefore an appeal under the provisions which post-date the coming into force of the Immigration Act 2014 amendments. Accordingly, the only issue for the Judge in this case is whether the Respondent's decision involves a breach of the Appellant's human rights. As the Judge rightly observed, he had no jurisdiction to consider that issue because the claim was certified.

5. As such, the Judge fell into error by making findings of fact and purporting to dismiss the appeal on immigration grounds. On application to this Tribunal, I granted permission on the basis that the Judge had no jurisdiction to make the Decision and this amounts to an arguable error of law. If a Judge lacks jurisdiction to make a decision, then the decision is wrong in law and should not be allowed to stand. Accordingly, by my decision dated 22 November 2017, I extended time for the application for permission to appeal for reasons which I gave and I granted permission by decision in the following terms (so far as relevant):-

> "3. Turning then to the substance of the permission application, the grounds of appeal are, in their analysis, arguably correct. For that reason, I grant permission to appeal. In fact, given the certification, I find it difficult to see how there could be any contrary view. I note that the Judge can hardly be blamed for what has occurred given the failings by the Appellant's solicitors both in lodging an appeal where there was no in-country right of appeal and not correcting that error by responding to the communication from the Tribunal. The effect of the error, as is accepted by the grounds, is that the Decision should be set aside and re-made dismissing the appeal for want of jurisdiction. I have given directions for further submissions to be made, particularly by the Respondent who has not yet had the opportunity to respond to the grounds. If there is no objection to the course proposed, I will then make that decision on the papers.

I then gave directions as follows:-

> **"Unless either party files and serves objections in writing to be received within 14 days from the date when this decision is sent, I propose to find an error of law in the Decision on the basis that the Judge lacked jurisdiction to make it. I then propose to set aside the Decision and re-make it dismissing the appeal."**

6. There has been no communication by or on behalf of the Appellant. By letter dated 3 January 2018, the Respondent wrote confirming that she does not oppose the Appellant's application for permission to appeal and

invites the Tribunal to determine the appeal on the papers as directed in the grant of permission.

7. For the reasons outlined at [4] to [5] above and in my grant of permission, I find that the Judge had no jurisdiction to make the Decision. I therefore set aside the Decision for that reason. Since there is no right of appeal to the Tribunal, I have no jurisdiction to decide the appeal. I therefore substitute my own decision finding that there was and is no valid appeal.

Decision

The decision of First-tier Tribunal Judge Pickup discloses an error of law because he made the decision when he had no jurisdiction to consider the appeal as the human rights claim had been certified and the refusal of that claim was the only decision which could be the subject of the appeal. I therefore set aside the decision of First-tier Tribunal Judge Pickup promulgated on 1 March 2017 and substitute a decision that there was and is no valid appeal in this case.

Signed Dated: 29 January 2018

Upper Tribunal Judge Smith