



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01439/2013

THE IMMIGRATION ACTS

Heard at Newport
On 7 October 2013

Date Sent
On 5 November 2013

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Before

UPPER TRIBUNAL JUDGE GRUBB

Between

AK

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Fenney, Duncan Moghal, Solicitors & Advocates
For the Respondent: Mr K Hibbs, Home Office Presenting Officer

DETERMINATION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the Appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

2. The appellant is a citizen of Pakistan who was born in 1977. She last entered the United Kingdom on 7 October 2012 with entry clearance as a Tier 4 Student. Her three children also entered as her dependents. The appellant's leave is valid until 28 February 2014. On 31 December 2012, she applied for asylum. Her application was refused on 30 January 2013. On 1 February 2013, the Secretary of State refused the appellant's claim for asylum.
3. The appellant appealed to the First-tier Tribunal under s.83 of the Nationality, Immigration and Asylum Act 2002. In a determination sent on 28 March 2013, Judge Trevaskis dismissed the appellant's appeal on asylum grounds and under Art 8 of the ECHR. Having unsuccessfully sought permission to appeal from the First-tier Tribunal, on 21 May 2013 UTJ Kebebe granted the appellant permission to appeal to the Upper Tribunal.
4. The appeal came before me on 7 October 2013 when I heard oral argument from the parties on whether the Judge had erred in law in dismissing the appellant's claim on asylum grounds. At the conclusion of the hearing, I reserved my decision.
5. In preparing my determination, I reached the provisional view that there was, in fact, no valid appeal before the First-tier Tribunal under s.83 of the 2002 Act. Consequently, I wrote to the parties in a letter dated 9 October 2013 in the following terms:

“On further considering the submissions made at the Upper Tribunal hearing on 7 October 2013 and the documents on file, I have reached the provisional view that there was no valid appeal before the First-tier Tribunal under s.83 of the Nationality, Immigration and Asylum Act 2002. Subject to any further written submissions made by the parties within 14 days of this notice, I propose to issue a determination:

(1) finding that the First-tier Tribunal erred in law in failing to conclude that there was no valid appeal before it;

(2) setting aside the decision of the First-tier Tribunal; and

(3) substituting a decision that there was no valid appeal before the First-tier Tribunal.”

6. I set out my reasons as follows:

At the date of the Secretary of State's decision [1 February 2013], the appellant had leave valid until 28 February 2014. Although that was leave in excess of one year, the appellant did not have a right of appeal under s.83 of the 2002 Act. Section 83 states that:

“(1) This section applies where a person has made an asylum claim and –

(a) his claim has been rejected by the Secretary of State, but

- (b) he has been granted leave to enter or remain in the United Kingdom for a period exceeding one year (or for periods exceeding one year in aggregate).
- (2) The person may appeal to the Tribunal against the rejection of his asylum claim.”

In Win (s.83 – Order of Events) [2012] UKUT 00365 (IAC), the Upper Tribunal concluded that an appeal under s.83 could only be brought if the relevant grant of leave (namely that referred to in s.83(1)(b)) post-dated the asylum claim. In this case, that does not apply as the appellant’s grant of leave pre-dated her claim made on 31 December 2012. Consequently the appellant does not have a right of appeal under s.83 of the 2002 Act.

Although the Secretary of State’s decision letter of 1 February 2013 purports to recognise a right of appeal under s.83 that statement cannot create a right of appeal to the Tribunal if no such right of appeal is conferred by the 2002 Act.

For the avoidance of doubt, the appellant has no right of appeal under s.82(2)(d) because the result of the refusal to vary her leave was not such that she had “no leave to enter or remain”.

- 7. On 16 October 2013, the appellant’s representatives, Duncan Moghal sent brief submissions to the Upper Tribunal. No representations have been received from the respondent. In their representations, Duncan Moghal accept that the appellant did not have a right of appeal under s.83 and invite me to set aside Judge Trevaskis’ determination for want of jurisdiction.

Decision

- 8. Having considered the representations, I have concluded that my provisional view is correct.
- 9. For the reasons I have given, there was not a valid appeal before the First-tier Tribunal. That determination, along with any findings set out therein, is set aside.
- 10. I substitute a decision that there was no valid appeal before the First-tier Tribunal.

Signed

A Grubb
Judge of the Upper Tribunal

Date: