



IAC-CH-AP-V1

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

Appeal Number: IA/21491/2014

THE IMMIGRATION ACTS

Heard at Field House

On 31st October 2014

**Decision & Reasons
Promulgated**

On 11th December 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

**MR ADEEL SHAHID SHEIKH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Iqbal of Counsel, instructed by Denning Solicitors

For the Respondent: Ms R Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. Anonymity has not previously been directed. No order is requested and I see no reason to make one.
2. The Appellant appeals a decision of the First-tier Tribunal (Judge C M Phillips) concluding that the Appellant did not have an in-country right of appeal against the Respondent's decision to refuse to vary leave to remain and to remove him under Section 10 of the Immigration and Asylum Act 1999. Permission was granted on the basis that it was arguable that the

judge was wrong to conclude that the Appellant did not have leave at the time of the refusal decision because his leave to remain had been extended by virtue of Section 3C(2)(b) and Section 3D(2)(a) of the Immigration Act 1971. The statutory extension arose because he had applied for further leave to remain as a Tier 4 (General) Student Migrant before the curtailment date of his existing leave on 28th April 2013.

3. The matter proceeded before me on the basis of submissions. Mr Iqbal made a spirited effort to enlarge the grounds. The first point taken was that although the Respondent had raised jurisdiction in the reasons for refusal, the Respondent's representative at the hearing had conceded jurisdiction, and the judge was bound by that concession.
4. I find no merit in that submission. Paragraph 14 of the decision clearly sets out that the issue of jurisdiction was live before the judge as it records that submissions were made on the point. At [15] there is reference to the Respondent's representative specifically taking instructions in respect of the issue, and confirming reliance on the jurisdictional point. As the judge's decision at [15] makes clear, the Respondent's representative acknowledged that there was a lack of detail in the nature of the deception in the decision letter but it was clear that when the judge tested out with the representative whether that meant that the jurisdictional point was not being pursued, the Respondent quite clearly confirmed that the jurisdictional point was not conceded. The judge was not acting unfairly in testing out the issue of the concession with the representative. For a concession to operate it must be unambiguous and intended to operate as a concession.
5. Mr Iqbal next sought to argue that the legality of the Section 10 removal decision was vitiated by the failure of the Respondent to follow their Immigration Directorate Instruction requiring an evidential basis for the immigration decision, but in the event, having taken me to the case of Anwar v SSHD [2010] EWCA Civ 1275, he took the point no further because of the comments therein at paragraph 24, namely that it is a public law point justiciable by way of judicial review so that, and even allowing for the fact that it was not a point argued before the First-tier Tribunal Judge and so incapable of giving rise to an error of law, it is a matter in any event unavailable absent an in-country right of appeal.
6. Mr Iqbal then moved to the construction point upon which leave had been granted. In this regard he sought to argue that the statutory leave operated to extend leave granted under the Immigration Rules so that the result of the curtailment was not that the Appellant was, at the time of the removal decision, a person who "has no leave to enter or remain", section 10 (8) of the Immigration and Asylum 1999 Act did not operate to invalidate section 3C leave. On the same reasoning the Respondent was unable to make a decision to remove under Section 47 of the 2007 Act.
7. I find no merit in this point either. Section 10(8) of the 1999 Act operates to invalidate any leave to enter or remain in the United Kingdom

previously “given”. The fact that the leave arises from statutory extension does not mean that it is not leave which has been “given” to an Appellant because it operates not as a new species of leave but as an extension of leave previously granted. In short, Section 10(8) has application to Section 3C leave. (QI (Pakistan) [2011] EWCA Civ 614 refers). With regard to Section 47, the Section simply has no operation because here the allegation is that the applicant attempted to obtain further leave by deception so that Section 10 applies on its own terms.

8. In the context of this case an out of country right of appeal is an adequate remedy for this Appellant to argue any substantive dispute arising from the Respondent’s decision (R (Lim) v SSHD [2007] EWCA Civ 773).

Decision

9. The Appellant’s appeal is dismissed and the First-tier Tribunal decision dismissing the appeal for want of jurisdiction stands.

Signed

Date **11th December 2014**

Deputy Upper Tribunal Judge Davidge

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date **11th December 2014**

Deputy Upper Tribunal Judge Davidge