



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

Appeal Number: IA/39287/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 25 November 2014**

**Determination
Promulgated
On 16 December 2014**

Before

**DEPUTY UPPER TRIBUNAL JUDGE
MS G A BLACK**

Between

**MR AMJAD ASLAM
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Miss A Holmes, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against a decision by the First-tier Tribunal (Judge Mitchell) promulgated on 11th September 2014. The Tribunal dismissed the appeal against the Secretary of State's refusal of leave to remain on the grounds that it had no jurisdiction to hear the appeal.

Background

2. The Appellant whose date of birth is 7 April 1981 and he is a citizen of Pakistan.
3. The Respondent considered the application for further leave to remain and refused the same with reference to paragraph 322 and 322(2) of the Immigration Rules HC 395 (as amended) and under Article 8 of the ECHR. The Respondent was not satisfied that the Appellant was seeking leave to remain in the UK for a purpose not covered by the Immigration Rules and was not prepared to exercise discretion in his favour. Furthermore, the Respondent relied on false representations made by the Appellant for the purpose of obtaining previous leave to remain and was not prepared to exercise discretion. The Appellant's leave to remain expired on 30th November 2008. There was no right of appeal against the refusal. In the reasons for refusal letter dated 24th September 2013 the Respondent considered the appellant's claim under Article 8 and referred to his previous claim and decision. She found that the appellant's submissions did not amount to a fresh claim, and accordingly he had no right of appeal.
4. In grounds of appeal dated 23.9.2013 it was submitted that the Appellant did have an in country right of appeal limited to a human rights claim.
5. The hearing before the First-tier Tribunal was listed for an oral hearing on 28 August 2014. There was no appearance by either the Appellant or his representative and so the Tribunal proceeded to determine the matter without a hearing. The Tribunal determined that there was no valid appeal before the Tribunal as there was no appealable decision under section 82(2) of the 2002 Act.

Grounds of Application

6. In grounds submitted by and on behalf of the Appellant it was argued that his representatives faxed a letter to the Tribunal on 22 August 2014 (six pages) requesting the matter to be determined on the papers with reference to supporting documents. It would appear that such documentation did not reach the court file. The Appellant was effectively denied a valid in country right of appeal under Section 94(2) of the Nationality Immigration & Asylum Act 2002 ("the 2002 Act").

Permission

7. Permission was granted by Designated First-tier Tribunal Judge Zucker on 21 October 2014 in the following terms:

"Through no fault of the judge, it is arguable that there has been unfairness on the basis that certain documentation did not reach the judge and that an application on human rights grounds had been made in time. It is arguable that the determination contains an error of law".

The Hearing

9. Miss Holmes appeared on behalf of the Secretary of State in this matter and there was no appearance by or on behalf of the Appellant or his legal representatives, Ebrahim and Co. I was satisfied that both the Appellant and his representatives had been properly served with the notice of hearing giving the date and time of the hearing and there was no communication to the Upper Tribunal to explain why neither party attended for the hearing nor seeking any adjournment. I proceeded therefore to determine the appeal in the absence of the parties in accordance with the Asylum & Immigration Upper Tribunal (Procedure) Rules 2008, Rule 38.
10. I heard brief submissions from Miss Holmes to the effect that the copy of the fax dated 20 August 2014 was inadequate evidence to support the Appellant's claim that his notice and grounds of appeal under Article 8 were sent to the Tribunal.

Discussion and decision

11. The Tribunal hearing this appeal proceeded to dismiss the appeal on the grounds that it had no jurisdiction as there was no right of appeal. It is argued that the Tribunal ought to have considered that the Appellant had an in country right of appeal under Article 8 and that documentary evidence had been produced in support with the fax sent on 20 August 2014. However, as there was no original documentation produced, no transmission slip and no confirmation of receipt by the Tribunal of the same, I was unable to find that this fax was evidence that such documentation had been sent.
13. In the file, however, there were grounds of appeal dated 23.9.2013 and undated additional grounds of appeal, which referred to the Article 8 claim. In addition there was correspondence from the Appellant's solicitors dating back to 12 October 2011, which I find related to a previously determined Article 8 claim. Indeed, the reasons for refusal letter dated 24.9.2013 referred to and considered the claim made on behalf of the Appellant under Article 8 of the Human Rights Act. However, what is apparent from the reasons for refusal letter is that the Secretary of State did not admit the Appellant's claim as a fresh claim and accordingly he had no right of appeal. Notwithstanding, I find that the Appellant has produced no supporting documentary evidence showing that Article 8 is engaged.
14. I have regard to all of the evidence before me and I am satisfied that there was certainly notice and grounds of appeal and additional grounds of appeal that ought to have been before the Tribunal who considered this matter in any event. However there was no right of appeal available to the appellant in respect of human rights as he had failed to establish a fresh

claim. The failure of the Tribunal to make reference to the human rights issues arguably may amount to an error of law. However, I am satisfied that the error is not material to the outcome. The Appellant failed to attend the First-tier Tribunal to support his claim and he has failed to attend the Upper Tribunal in support of this appeal. Despite the notices of appeal relying on Article 8, there is no evidence detailing any new Article 8 claim either on the grounds of private and family life (see **Patel** and **Sakar**). Therefore even had the Tribunal found any valid right of appeal and proceeded to determine the Article 8 issues, it was bound to fail.

Decision

15. I find no material error of law in the determination which shall stand.

No anonymity direction is made.

Signed

Date 4.12.2014

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 4.12.2014

Deputy Upper Tribunal Judge G A Black