



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

Appeal Number: IA/53819/2013

THE IMMIGRATION ACTS

Heard at Field House

On 26 November 2014

Determination

Promulgated

On 1 December 2014

Before

**THE HONOURABLE MRS JUSTICE ELISABETH LAING DBE
UPPER TRIBUNAL JUDGE A M KOPIECZEK**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ATIFULLAH ATIF ULLAH

Respondent

Representation:

For the Appellant: Mr P Nath, Home Office Presenting Officer

For the Respondent: No appearance

DETERMINATION AND REASONS

Ex tempore

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal which was promulgated on 9 September 2014. We refer to the parties as they were before the First-tier Tribunal. Permission to appeal was granted by First-tier Judge Davidge on 20 October 2014. When granting permission to appeal she explained that the Secretary of State was appealing (in time) the decision of the First-tier Tribunal allowing the

appellant's appeal against a refusal by the respondent to grant leave as a Tier 4 (General) Student.

2. Unknown to the First-tier Tribunal the appellant had already left the United Kingdom with the result that the appeal was to be treated as abandoned by reference to Section 104(4) of the Nationality, Immigration and Asylum Act 2002. As a result of that the First-tier Tribunal lacked jurisdiction.
3. The appeal was heard on 26 August 2014 and the determination of the Tribunal recorded, at paragraph 4, that no one had appeared at the hearing on behalf of the appellant, that the Tribunal had contacted Messrs Sky solicitors, who had represented him previously, and had been told that the firm no longer represented the appellant. At that point Mr Martineau, who had appeared on behalf of the Secretary of State, invited the Tribunal to proceed with the appeal. So it seems that the Home Office Presenting Officer at that stage did not know, and did not tell the Tribunal, that the appellant had in fact left the United Kingdom.
4. The grounds of appeal attached an entry from the Home Office CID which confirmed that the appellant had left the United Kingdom on 29 June 2014. We accept on the basis of this entry that the appellant did in fact leave the United Kingdom on that date.
5. Section 104(1) of the 2002 Act describes when an appeal under Section 82(1) is 'pending'. It is 'pending' during the period beginning with when it is instituted and ending with when it is finally determined, withdrawn or abandoned.
6. Section 104(4) provides that an appeal under Section 82(1) brought by a person while he is in the United Kingdom shall be treated as abandoned if the appellant leaves the United Kingdom.
7. So it is clear as a matter of statute that once the appellant had left the United Kingdom his appeal was treated by statute as having been abandoned and was no longer pending for the purposes of Section 104(1). In the light of that it seems to us that the Tribunal did not have jurisdiction to decide the appeal or indeed to embark on the appeal at all in the first place. The Tribunal of course is not to blame because the respondent was represented and did not tell the Tribunal that the appellant had left the country.
8. For those reasons it seems to us that the Tribunal lacked jurisdiction and we have no option but to allow the Secretary of State's appeal. The consequence of that is that we set aside the decision of the First-tier Tribunal allowing the appeal, and re-make the decision by dismissing the appeal for want of jurisdiction.

Signed

Date 28/11/2014

Upper Tribunal Judge Mrs Justice Elisabeth Laing DBE

