



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

Appeal Numbers: OA/12108/2012

THE IMMIGRATION ACTS

**Heard at Newport
On 21 March 2014**

**Determination
Promulgated
On 12 May 2014**

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MUHAMMAD IJAZ BUTT

Respondent

Representation:

For the Appellant: Mr Irwin Richards, Senior Home Office Presenting Officer
For the Respondent: No appearance

DETERMINATION AND REASONS

1. The Secretary of State appeals, with permission, against the determination of an immigration judge allowing an appeal by the respondent, whom we shall call the claimant, against the Secretary of State's decision refusing

him further leave to remain. The Secretary of State's ground of appeal is that the Tribunal have no jurisdiction to hear the claimant's appeal.

2. In the First-tier Tribunal Judge Graham dealt with the matter at a hearing, but in the absence of either party. She was told that the claimant had been removed from the United Kingdom, and, as the Secretary of State points out, that should have alerted her to the fact that there was a problem about jurisdiction, because if the claimant had an in-country right of appeal and had exercised it, he could not have been removed. No doubt the Secretary of State was not represented before the judge because it was thought that there was no right of appeal.
3. The position is as follows. The claimant applied, during existing leave, for further leave to remain. That application was refused, no doubt by the division of the Home Office dealing with such applications, on 27 April 2012. Papers were served indicating that there was a right of appeal, which the claimant purported to exercise. The assertion that there was a right of appeal was, however, wrong. That is because on 24 April 2012 the claimant was arrested and detained and served with a decision that he should be removed under s.10 of the 1999 Act as a person who obtained his leave by deception.
4. The latter decision carried no right of appeal: it could have been challenged by judicial review, but was not challenged. The notice of the decision had, under s.10(8) of the 1999 Act, the effect of invalidating all the claimant's leave. Thus, when his application was refused two days later, the refusal did not cause him to have no further leave, because he had none anyway. He therefore had no right of appeal against the refusal: it was not an "immigration decision" within the meaning of s.82(2) of the 2002 Act.
5. Judge Graham erred in thinking that she had jurisdiction to hear the claimant's appeal against the refusal of further leave. We set aside her decision allowing his appeal. We substitute a determination dismissing his appeal for want of jurisdiction.

TRIBUNAL

C M G OCKELTON
VICE PRESIDENT OF THE UPPER

IMMIGRATION AND ASYLUM CHAMBER
Date: 7 May 2014