



Upper Tier Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: VA/16921/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 10 October 2014

Determination Promulgated  
On 13 October 2014

Before

Deputy Upper Tribunal Judge Pickup

Between

Secretary of State for the Home Department  
[No anonymity direction made]

Appellant

and

Jaspal Singh

Claimant

**Representation:**

For the claimant: Mr G Haque  
For the appellant: Ms J Isherwood, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, Jaspal Singh, date of birth 5.6.87, is a citizen of India.
2. This is the appeal of the Secretary of State against the determination of First-tier Tribunal Judge Stokes promulgated on 4.8.14, who allowed the claimant's appeal against the decision of the respondent to refuse him entry clearance to the United Kingdom as a family visitor pursuant to paragraph 41 of the Immigration Rules. The Judge heard the appeal on 17.7.14.

3. First-tier Tribunal Judge Davies granted permission to appeal on 15.8.14.
4. Thus the matter came before me on 10.10.14 as an appeal in the Upper Tribunal.

### **Error of Law**

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Stokes should be set aside.
6. As Judge Stokes appears to have recognised at §18 and §23 of the determination of the First-tier Tribunal, in paragraph 41 appeals post-dating 25.6.13, there is no right of appeal except on human rights and/or discrimination grounds. Whilst the grounds contain an appeal claim under article 8 ECHR, the sponsor accepted at the First-tier Tribunal hearing that there was no real claim in respect of private or family life, but such a claim was only added to the grounds of appeal as a procedural device in order to create a full right of appeal to the First-tier Tribunal.
7. In the circumstances, Judge Stokes did not consider article 8 or make any decision in respect of article 8.
8. Judge Stokes was in error to consider that this was an effective procedural device to enable the First-tier Tribunal to consider the appeal under the Immigration Rules. If there is no valid human rights or race relations claim, there is no right of appeal and no valid appeal before the First-tier Tribunal. Merely including a bogus article 8 claim does not create an effective procedural device to enable an appellate Tribunal to reconsider the decision of the Secretary of State. In the circumstances, the judge was in error in considering the application under the Immigration Rules and making a decision that the requirements of the Immigration Rules were met. The correct decision in this case is to find that there is no valid appeal and thus no appeal that can be determined.
9. Incidentally, the judge was also in error in §22 in finding that the decision of the Secretary of State was not in accordance with the law. That the Secretary of State refused the application following consideration of the Rules does not render that decision not in accordance with the law. Further, if the decision was not in accordance with the law, the correct approach would be to allow the appeal only to the limited extent that it remains for the Secretary of State to make a decision which is in accordance with the law.

### **Conclusion & Decision**

10. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I re-make the decision in the appeal by finding that there is no valid appeal before the Tribunal and thus no appeal to be determined.



Signed:

Date: 10 October 2014

Deputy Upper Tribunal Judge Pickup

**Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

**Fee Award**

**Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: There is no valid appeal.



Signed:

Date: 10 October 2014

Deputy Upper Tribunal Judge Pickup