



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/05353/2014**

**Appeal number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On January 6, 2015**

**ed on**

**8, 2015**

**Promulgat**

**On January**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR R M  
(ANONYMITY DIRECTION MADE)**

Respondents

Representation:

For the Appellant: Mr Wilding (Home Office Presenting Officer)

For the Respondent: Ms Murshed, Counsel, instructed by AB  
Mackenzie

Solicitors

**DETERMINATION AND REASONS**

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.

2. The appellant, born November 16, 1986, citizen of Uganda, entered the United Kingdom on July 6, 2010. He claimed asylum on September 22, 2010 but the respondent refused his application on October 8, 2010. The First-tier Tribunal heard his appeal on October 15, 2010 and his appeal was dismissed. Further representations were made on November 12, 2010 but the respondent did not find these representations amounted to fresh grounds and no appeal was offered. Removal directions were issued for November 24, 2010 and the appellant applied for a stay on that removal by issuing judicial review proceedings. Mr Justice Langstaff ordered a stay on the proceedings. In 2012 an application outside of the Rules was submitted but this application was rejected with no right of appeal as he had no legal basis to be in the country. On July 22, 2014 the appellant was detained working illegally and a decision to remove him under section 10 of the Immigration and Asylum Act 1999. This did not give him an in-country right of appeal.
3. The appellant lodged grounds of appeal on July 30, 2014 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and Duty Judge Borsada directed the respondent provide evidence of whether the earlier decision of November 24, 2010 had been certified. The respondent failed to comply with this direction and on September 1, 2010 the matter came before myself as Duty Judge and I directed the matter be listed for a substantive hearing and this issue could be dealt with at the substantive hearing.
4. On October 8, 2014 the matter came before Judge of the First Tier Tribunal Rothwell (hereinafter referred to as the "FtTJ") and in determination promulgated on October 9, 2014 he allowed the appeal on asylum grounds.
5. The respondent lodged grounds of appeal on October 29, 2014 and on November 14, 2014 Judge of the First-tier Tribunal Deans gave permission to appeal finding there were arguable grounds that the FtTJ had erred by dealing with the appeal when the immigration decision did not provide for a right of appeal.

### **PRELIMINARY ISSUES**

6. Mr Wilding and Ms Murshed confirmed the decision letter of November 24, 2010 did not certify the appellant's claim under the Section 94 of the 2002 Act. They also both agreed that the appellant had lodged an application in 2012 outside of the Rules.

7. My attention was drawn to BA (Nigeria) and PE (Cameroon) v SSHD [2009] EWCA Civ 119. At paragraph [32] Lord Hope concluded-

“... claims which are not certified under section 94 or excluded under section 96, if rejected, should be allowed to proceed to appeal in-country under sections 82 and 92, whether or not they are accepted by the Secretary of State as fresh claims”

8. The only challenge in the respondent's grounds of appeal was that the FtTJ had erred by hearing the appeal in light of the section 10 decision.
9. The above case of BA coupled with the fact a human rights claim was made in 2012 (before the 2014 removal decision) meant the FtTJ was correct in hearing the appeal as there was an in-country appeal right.
10. The respondent's grounds of appeal had no basis and Mr Wilding acknowledged that this was the only issue raised in the grounds.


#### **ERROR OF LAW ASSESSMENT**

11. There was no error of law as acknowledged by Mr Wilding and I therefore dismiss the appeal.

#### **WASTED COSTS**

12. Ms Murshed invited me to make a wasted costs order for today's hearing. I declined on the basis the respondent had been given permission to appeal to the Upper Tribunal.

#### **Decision**

-  13. The decision of the First-tier Tribunal did not disclose an error in law. The original decision shall stand.

14. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) an appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. An order was made in the First-tier and I see no reason to amend that order.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I leave the fee award as it was.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

*SKA*