



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

Appeal Number: AA/10449/2014

THE IMMIGRATION ACTS

Heard at Bradford

Decision & Reasons

On 24 March 2015

Promulgated

On 14 April 2015

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**SYED SULTAN HUSSAIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Syed Sultan Hussain, was born on 1 January 1985 and is a male citizen of Pakistan. The appellant had claimed asylum on entry to the United Kingdom and had been detained at Harmondsworth under the “fast track” procedure. It was at Harmondsworth on 9 December 2014 that the appellant’s appeal was heard in the First-tier Tribunal (Judge Kanagaratnam). The appeal was dismissed. The appellant appealed to the Upper Tribunal. At that stage, he was not represented and permission was not granted. He renewed his application for permission to the Upper Tribunal, this time on different grounds drafted by Legal Justice Solicitors.

The grounds solely challenged the First-tier Tribunal's decision solely on the basis of the decision of the Court of Appeal in *Detention Action* [2014] EWCA Civ 1634. The grounds asserted that the "process in which the appeal was heard before IJ Kanagaratnam was unfair and unlawful and the matter should be reheard". The Court of Appeal held that the evidence before it in that case did not "provide the sort of substantial fact-based justification that the Supreme Court ... indicated would be necessary to justify an interference with a fundamental right".

2. Mr Diwnycz, for the Secretary of State, provided the Tribunal and the appellant with copies of reviews of the appellant's detention in Harmondsworth which had been carried out following his arrival from Pakistan [16 November 2014] and his detention at Harmondsworth IRC [12 November 2014] throughout the period of the appeal process before the First-tier Tribunal. The reason for the initial detention and the reason given for continued detention of the appellant by way of periodic review (generally every 7 days) remained the same, namely that the appellant is a single man with no known dependants or family living in the United Kingdom and he was considered by the Secretary of State throughout that period of being at risk of absconding. The factor in the appellant's continued detention appears also to have been the fact that he held a valid travel document and thereby rendering him suitable for being dealt with under the "fast track" because he would be able to be removed without delay on his own passport.

3. The Court of Appeal in *Detention Action* at [63], held:

Accordingly, despite the elusive way this emerges from the text of the *DFT Guidance*, I have concluded that, until a person's appeal rights are exhausted, if he or she continues to satisfy the "quick processing criteria" the policy empowers the Secretary of State to detain pursuant to those criteria rather than the general detention criteria. For these reasons, despite the force of the submissions on behalf of *Detention Action*, I have concluded that where the "quick processing criteria" continue to be met, post-decision DFT detention pending appeal does not breach the Secretary of State's policy in the *DFT Guidance*.

4. The appellant was eventually granted temporary admission and he was not detained when his appeal was considered by the Upper Tribunal at Bradford on 24 March 2015. I was careful to explain as clearly as I could to the appellant the basis upon which his former solicitors had drafted the grounds of appeal. We are, in this case, dealing with the historic legality of the appellant's detention at the time that his appeal was considered by the First-tier Tribunal; if his detention was not legal (in the light of *Detention Action*) then it would appear that the decision of the First-tier Tribunal cannot stand. However, I am satisfied that in the period following the appellant's initial detention and up to and including the promulgation of the First-tier Tribunal decision the appellant's detention was not arguably illegal. The fact that the appellant was subsequently granted temporary admission and the fact that he has not absconded during the period of that temporary admission does not, in my opinion, cast doubt on

the legality of the detention. I find that the appellant's detention was lawful on the basis of the documentary evidence of the regular reviews carried out by those officers of the Home Office responsible for the appellant's detention. I consider that it was open to the Secretary of State to continue to detain the appellant on the basis that he did not have sufficient close ties with any individual in the United Kingdom to give rise to the substantial possibility that he would not abscond. The fact that the appellant had a valid Pakistani passport is, in itself, not a good reason for having detained him in the absence of any other factors; the fact that the appellant might be easily removed because he had a valid passport is simply a matter touching the administrative convenience of those detaining the appellant and is not justification for his detention. However, the fact that the appellant was alone in the United Kingdom without any family or personal ties to anyone living here was at the outset of the detention and subsequently a reasonable justification for the denial of his fundamental right to liberty.

5. Having decided that the appellant's detention was lawful and that the determination of the First-tier Tribunal has not been set aside on the basis of the grounds advanced by the appellant's former solicitors, the question remains whether the decision of Judge Kanagaratnam was flawed by error of law. As I have noted, the renewed grounds to the Upper Tribunal make no reference to the merits of the judge's decision whilst the appellant's own handwritten grounds seeking permission to the First-tier Tribunal were, in my opinion, correctly denied permission by Judge Bennett who found that they were no more than "a summary of the appellant's claim". I gave the appellant every opportunity to tell me why he believed the First-tier Tribunal's decision was flawed in law but, once again, he did little more than to assert a case which that Tribunal had validly rejected. Accordingly, having read the First-tier Tribunal determination carefully, I can identify no error of law in it. Accordingly, this appeal is dismissed.

NOTICE OF DECISION

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 6 April 2015

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT **FEE AWARD**

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

Signed

Date 6 April 2015

Upper Tribunal Judge Clive Lane