



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

Appeal Number: IA/00449/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14th January 2015**

**Decision & Reasons
Promulgated
On 11th February 2015**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MASUM AHMAD

Respondent

Representation:

For the Appellant: Ms A Holmes, Home Office Presenting Officer

For the Respondent: Mr M Hasan, instructed by Kalam Solicitors

DECISION AND REASONS

1. This is the Respondent's appeal against the decision of Judge Scott made following a hearing at Taylor House on 21st August 2014.

Background

2. The Appellant is a citizen of Bangladesh born on 10th December 1985. He arrived in the UK on 16 January 2010 with entry clearance as a student until 31 December 2011. On 29 December 2011 he applied for further leave to remain, also as a student, but was refused on 25 February 2012.

On 29 September 2012 he made an application for leave to remain as a Tier 4 (general) student which was “voided as an inappropriate application”. He became appeal rights exhausted on 25 October 2012.

3. The Appellant then made a further application for leave to remain on 19 December 2012. He was refused under Paragraph 245ZX(m) of the Rules, which states that the applicant will be refused if he is in the UK in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded.
4. He appealed against the decision. His appeal was allowed by Judge Scott on the basis that the Appellant had not been informed by the Secretary of State that a previous application had been rejected as invalid.
5. Under Section 82(2)(e) of the Nationality Immigration and Asylum Act 2002 Act there is a right of appeal to the Tribunal against a decision to refuse to vary a person’s leave to enter or remain in the UK if when the variation takes effect, the person has no leave to enter or remain.
6. At the time of the application on the 19 December 2012 the Appellant had no leave to vary.
7. The difficulty for the Appellant, as Mr Hasan very properly acknowledged, is that the judge had no jurisdiction to hear the appeal since there was no immigration decision before him under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. He is not assisted by a potential continuation of leave under 3C of the Immigration Act 1971 because, under Section 3C(4), a person may not make an application for variation of his leave to enter or remain in the UK while that leave is extended by virtue of that Section.
8. Since the judge had no jurisdiction to entertain the appeal is decision has to be set aside. It is re-made as follows. The appeal is dismissed for want of jurisdiction.

Signed

Date

Upper Tribunal Judge Taylor