



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

Appeal Number: IA/16282/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 20th March 2015**

**Decision & Reasons
Promulgated
On 24th March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**MR UMID KABULOV
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms E Savage, Home Office Presenting Officer

For the Respondent: Mr E Cole, Counsel instructed by Sterling & Law Associates

DECISION AND REASONS

Introduction

1. Although this is an appeal by the Secretary of State I will refer to the parties as they were before the First-tier Tribunal.

2. The appellant is a citizen of Turkmenistan born on 23rd May 1988. On 6th February 2014 the appellant made an application as a Tier 4 student. On 18th March 2014 the appellant was refused because he was not awarded any points under Appendix A. The respondent contended he had no right of appeal due to his having made his application when he did not have leave to remain. The appellant appealed however on 2nd April 2014. His appeal was allowed in a determination of Judge of the First-tier Tribunal Gibb promulgated on 4th December 2014.
3. On 23rd January 2015 Judge of the First-tier Tribunal Saffer found that there was an arguable error of law because it was arguable that there was no jurisdiction for the Tribunal to hear the appeal.
4. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions

5. Mr Cole arrived late and explained that he had only been instructed at 2.30pm via text message. The solicitors had thought they had instructed counsel but in fact had forgotten to do so. He did not have papers and needed some more time. I provided him with an appeal bundle and gave him time to read it. I explained to the appellant and Mr Cole the issue before the Tribunal. Ms Savage also supplied Mr Cole with a copy of s.82 of the Nationality, Immigration and Asylum Act 2002 as it stood at the time of decision and appeal.
6. I asked Ms Savage to explain her grounds of appeal in full for the benefit of Mr Cole, although I indicated that I thought they were correct. She relied upon the written grounds. The history of the matter was that the appellant had made a previous application which had been refused and had been appealed. This appeal was withdrawn on 5th February 2014.
7. The new application, which led to this appeal, was made when the appellant had no leave on 6th February 2014. There was therefore no immigration decision, as defined in s.82(2) of the Nationality, Immigration and Asylum Act 2002, contained in the refusal of that application as there was no removal decision in relation to the appellant and there was no refusal to vary his leave to remain as he had no leave to remain at the time of application to vary.
8. Judge Gibb had erred in law at paragraph 15 of his determination by thinking that the 28 day provision under the Tier 4 migrant Immigration Rules created an appeal right.
9. Mr Cole asked for 3 days to make written submissions but I refused this application as the law is clear. He then contended that he had made an application for an adjournment at the start of the proceedings but this was not correct. He had merely asked for more time and had been given time

to read the papers relevant to the case, and had not asked for more time after this.

10. I explained to the parties that I found Judge Gibb had erred in law and that the decision would be set aside and a new decision substituting dismissing the appeal for want of jurisdiction would be substituted, but that I would set out my reasons in writing.

Conclusions - Error of Law

11. Judge Gibb does not give any reasons at paragraph 15 of his determination as to why an application made within 28 days of the expiry of the appellant's leave attracts a right of appeal if refused. I accept the submission of the respondent that he had probably become confused by the fact that such an application may be granted as complying with the Immigration Rules.
12. The appellant had no leave at the time of application and so there was therefore no immigration decision refusing to vary his leave to remain and giving him a right of appeal under s.82(1) of the Nationality, Immigration and Asylum Act 2002 in accordance with s.82(2)(d) of the Nationality, Immigration and Asylum Act 2002. The Tribunal confirms that this approach is correct in SA (work permit refusal not appealable) Ghana 2007 UKAIT 00006.

Decision

1. The First-tier Tribunal erred in law.
2. The determination of the First-tier Tribunal is set aside.
3. The appeal is remade dismissing it for want of jurisdiction.

No anonymity direction is made.

Signed

Date 20th March 2015

Judge Lindsley
Deputy Upper Tribunal Judge

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

Signed

Date 20th March 2015

Judge Lindsley
Deputy Upper Tribunal Judge