



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

Appeal Number: IA/15476/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 13 July 2016**

**Decision & Reasons  
Promulgated  
On 28 July 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY**

**Between**

**MAHBUB ALAM  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Ahmed, Counsel, Lincoln's Chambers London

For the Respondent: Miss Holmes, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Bangladesh born on 13 May 1977. On 13 March 2007 he applied for indefinite leave to remain in the United Kingdom on compassionate grounds. The Respondent sent a letter on 16 September 2014 to the Appellant which stated that he had submitted insufficient information and evidence for leave to be granted and his application was refused with no right of appeal. His appeal was heard by Judge of the First-tier Tribunal Symes on 19 October 2015. The appeal was dismissed for want of jurisdiction, in a decision promulgated on 22 October 2015.
2. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Hollingworth on 17 May 2016. At paragraph 4 of the decision the Judge states that when the case is

properly analysed there is no right of appeal. In the same paragraph he refers to a decision informing a migrant, (the appellant), of his liability to treatment as an illegal entrant, not amounting to a removal direction. In the respondent's bundle is a form IS.151A which refers to the appellant being informed that he may be liable to removal. Following that there is a form IS.151A 2 which states that a decision has been taken to remove the Appellant from the United Kingdom. The permission states that the Judge has not referred to this decision in his analysis although he placed weight on the decision informing the appellant of his liability to treatment as an illegal entrant not amounting to a removal direction. The grounds of appeal state that to the Appellant's case is that he fears for his life from non-state actors on account of his journalism and the appeal is stated to be against the decision of the Respondent dated 16 September 2014 served on 4 April 2015 refusing his claim for humanitarian protection or discretionary leave and the issue of removal directions dated 4 April 2015. The permission states that it is arguable that the Judge has not provided a sufficient analysis before reaching his stated conclusion that the appeal should be dismissed for want of jurisdiction.

3. There is a Rule 24 response from the Respondent opposing the Appellant's appeal. This states that the issue appears to be whether the Appellant has an in country right of appeal.
4. The Presenting Officer submitted that there is a preliminary issue. This claim revolves round whether the Appellant made a human rights claim initially, when in 2007 he applied for leave to remain. She made reference to the refusal letter of 2014 which states that there is no right of appeal and she referred to the service of the forms IS.151A and IS.151A 2. The latter deals with a right of appeal from outside the United Kingdom. She submitted that the Respondent has not been provided with sufficient evidence to show that an asylum or a human rights claim was made initially by the Appellant but she submitted that if the Appellant did make a human rights claim with his initial application there will be an in country right of appeal.
5. Counsel for the Appellant submitted that he agrees up to a point with the Presenting Officer's submissions. He confirmed that if the Appellant made a human rights claim with his application for leave to remain he will have an in country right of appeal. He referred to a 93 page bundle which was submitted with the Appellant's appeal and he referred to paragraph 92(4) (a). This deals with an appeal against an immigration decision, if the Appellant has made an asylum claim or human rights claim while in the United Kingdom. It states that if that if he has done that he will have an appeal from within the United Kingdom.
6. I asked Counsel if he was able to make submissions showing that the Appellant did make a human rights claim with his original application. He submitted that the First-tier Judge made an error in his decision because the Respondent did not mention that right specifically when the application was refused.

7. I was referred to paragraph 4 of the decision and IS.151A Part 2. He submitted that the Respondent has, since issuing that decision, been trying to remove the Appellant. He submitted that the Respondent is not entitled to do that because the Appellant has an in country right of appeal. I asked Counsel to show me where in the Appellant's original application, he applied on human rights issues.
8. I was referred to the Respondent's bundle and the covering letter sent to the Immigration and Nationality Directorate by Erasure Legal Services on 12 March 2007. He submitted that this covering letter was sent in with the application form. I was referred to the second page of this letter which states that the Appellant is relying on Article 3 of ECHR to support his application. He submitted that because he had made that human rights application, when he received the refusal letter he appealed in spite of its terms. He submitted that the covering letter makes it absolutely clear that a human rights claim was made with the Appellant's original application.
9. The Presenting Officer submitted that the human rights claim is not a strong claim but when the letter of 12 March 2007 is considered, (this is in the Respondent's bundle), it is clear that the Appellant is relying on Article 3 of ECHR and this means that he has an in country right of appeal.
10. I have considered all the evidence on file, in particular the application form and the covering letter from Erasure Legal Services dated 12 March 2007. I have given weight to this when considering Section 92(4) (a) which makes it clear that if a human rights claim has been made while the Appellant is in the United Kingdom he should be granted an appeal within the United Kingdom. I have considered the submissions made by both parties. There is clearly a material error in the First-tier Judge's decision promulgated on 29 October 2015. The Appellant has an in country right of appeal and the Tribunal has jurisdiction to hear this appeal.

### **Notice of Decision**

11. As I have found that there is a material error of law in the First-tier Tribunal's decision and that the Tribunal has jurisdiction in this claim I am setting the First-tier Tribunal decision aside.
12. The findings of the First-tier Tribunal cannot stand. Under Section 12(2)(b) (i) of the 2007 Act and Practice Statements 7.2 the nature and extent of judicial fact finding necessary for the decision to be re-made is such that it is appropriate to remit the case to the First-tier Tribunal. The members of the First-tier Tribunal chosen to reconsider the case are not to include Judge Symes.
13. Anonymity has not been directed in this case.

Signed

Date **28 July 2016**

Deputy Upper Tribunal Judge I A M Murray