



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

Appeal Number: IA/38195/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 7 January 2016**

**Decision & Reasons Promulgated
On 25 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

Mrs KAMALJIR KAUR

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. S Bellara

For the Respondent: Mr S. Whitwell, Home Office Presenting Officer

DECISION & REASONS

1. The Appellant is a national of India born on 12 December 1983. On 1 October 2014 the Respondent made a decision to remove the Appellant. This followed a decision of the same date in which the Respondent stated that she was satisfied that there was substantial evidence to conclude that the Appellant had fraudulently obtained an ETS certificate by use of a proxy test taker. The right of appeal was provided but only after the Appellant had left the United Kingdom.

2. The Appellant sought to appeal in-country and lodged an IAFT-1 form with the First-tier Tribunal on 6 October 2014. The appeal came before Judge of the

First-tier Tribunal Loughridge for a decision on the papers on 6 July 2015 and was dismissed due to the “*almost complete lack of information/ evidence.*”

3. The Appellant sought permission to appeal to the Upper Tribunal on the basis that the Respondent had not discharged the burden of proving that the Appellant had used deception and permission to appeal was granted by Designated Judge Shaerf for this reason.

4. In a rule 24 response, Mr David Clarke made two points: firstly, that the Appellant had failed to identify a ground of appeal under section 84 of the NIAA 2002 challenging the Respondent’s decision and so her complaint was misplaced and secondly, that the decision under appeal is an IS151A part 2 decision which provides the Appellant with an out of country appeal and if this is so, the Upper Tier does not have jurisdiction to hear the appeal.

5. At the hearing before me, Mr Bellara sought to argue that as the Appellant had raised human rights in her application for permission to appeal to the First-tier Tribunal she was entitled to an in-country right of appeal. In response, Mr Whitwell drew my attention to the judgments in Nirula [2012] EWCA Civ 1436 and Virk [2013] EWCA Civ 652.

6. It is clear from Nirula [2012] EWCA Civ 1436 per Lord Justice Longmore that, in a case which would otherwise require an out of country appeal, any human rights claim has to be made before a notice of appeal is served. This Appellant raised human rights grounds for the first time in her application for permission to appeal to the FtT. In Virk [2013] EWCA Civ 652, Lord Justice Patten held at [23] that: “*Statutory jurisdiction cannot be conferred by waiver or agreement; or by the failure of the parties or the tribunal to be alive to the point.*” It is clear in light of these authorities that neither the First-tier nor the Upper Tribunal has jurisdiction to entertain the appeal.

Decision

7. The appeal is dismissed through want of jurisdiction: rule 8(2)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Deputy Upper Tribunal Judge Chapman

22 January 2016