



IAC-FH-CK-V1

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

Appeal Number: IA/41321/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25 February 2016**

**Decision &
Promulgated
On 24 March 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**IMRAN ASHEQ
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

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

For the Respondent: Ms M Malhotra of Counsel (Direct Access)

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Ghani promulgated on 7 September 2015 brought with the permission of First-tier Tribunal Judge N J Bennett granted on 31 December 2015.
2. Although before me the Secretary of State for the Home Department is the appellant and Mr Asheq is the respondent, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to Mr Asheq as the Appellant and the Secretary of State as the Respondent.

3. This case came before the First-tier Tribunal in the following way. On 31 July 2014 the Appellant was served with a number of documents. One of those was a letter explaining that it had come to the attention of the Respondent from information provided by the Educational Testing Service that an anomaly with his speaking test had indicated the presence of a proxy test taker. In consequence the Appellant was served with an IS.151A 'Notice to a Person Liable to Removal' pursuant to section 10 of the Immigration and Asylum Act 1999: the Notice specified amongst other things the following: *"You are specifically considered a person who has sought leave to remain in the United Kingdom by deception following information provided to us."*
4. The Appellant was also served on the same day with an IS.151A Part 2, being a 'Notice of Immigration Decision'. The decision therein was to remove the Appellant from the United Kingdom. The Notice of Immigration Decision included the following information in respect of the Appellant's right of appeal: *"You are entitled to appeal this decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002 after you have left the United Kingdom."*
5. The question of the Appellant's right of appeal was raised in grounds of appeal submitted with his Notice of Appeal - lodged with the Tribunal prior to the Appellant's departure from the United Kingdom. It was argued in those grounds of appeal with reference to section 82(2)(c) of the Nationality, Immigration and Asylum Act 2002 that the Appellant had an in-country right of appeal.
6. The difficulty with those submissions is that the decision to remove the Appellant was not taken pursuant to section 82(2)(c) but was a section 82(2)(g) decision. Ms Malhotra very correctly and properly acknowledges that such a decision is a decision that only attracts a right of appeal after departure from the United Kingdom.
7. It is also acknowledged that the Appellant did not raise any issues in respect of human rights prior to the Respondent's decision. In those circumstances the case of **Nirula [2012] EWCA Civ 1436** is germane (as was identified in the grant of permission to appeal), and again Ms Malhotra very properly acknowledges the implicit force in that decision that it is, as it were, too late to be raising human rights for the first time in the context of grounds of appeal before the Tribunal in order to secure an in-country right of appeal.
8. In those circumstances it seems to me that the First-tier Tribunal Judge, who may very well not have been entirely alert to the issue, was quite

simply in error in accepting jurisdiction in this appeal. There is no express reference to the issue in the short decision of the First-tier Tribunal Judge, notwithstanding that it was adverted to in some detail in the grounds of appeal, and also of course notwithstanding that it was plainly a matter indicated on the face of the Notice of Immigration Decision which was purportedly the subject of the appeal.

9. I find that the decision of the First-tier Tribunal Judge was in error of law in that he enjoyed no jurisdiction to consider the Appellant's appeal. It follows that I must set aside the decision of the First-tier Tribunal.
10. Having done that, I conclude that there is no jurisdiction for this Tribunal to take any further action in the case of Mr Asheq. There is no valid appeal notwithstanding the lodging of a Notice of Appeal, and accordingly there is nothing upon which the Tribunal's jurisdiction bites.

Notice of Decision

11. The decision of the First-tier Tribunal contained a material error of law and is set aside.
12. There is no in-country right of appeal in respect of the immigration decision of 31 July 2014. There is no valid appeal; the Tribunal has no jurisdiction and takes no further action.
13. No anonymity direction is sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: **7 March 2016**

Deputy Upper Tribunal Judge I A Lewis