Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08500/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 August 2017	**On 27 September 2017**

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE LINDSLEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KAMALPREET KAUR
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr I. Jarvis, Home Office Presenting Officer.
For the Respondent: Miss N. Foster, instructed by Just Ask Solicitors.

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against a decision of Judge Sweet in the First-tier Tribunal. The respondent, whom we shall call "the claimant", is a national of India. She was admitted to the United Kingdom as a spouse on 20 March 2013. She had leave which was due to expire on

20 December 2015. On 1 December 2015 she applied for further leave; that, it is clear therefore, was an in-time application and had the consequence that her leave continued under s.3C of the Immigration Act 1971 during the time in which, firstly, it awaited decision; secondly, during which any appeal against a negative decision could be brought; and thirdly, during the time in which any such appeal was pending.

2. The Secretary of State decided on 10 March 2016 to refuse that application. She issued a letter which sets out substantively the reasons for the refusal and a notice purporting to indicate the legal consequences of the refusal. The notice appears to indicate that there is an in-country right of appeal against the decision; but the decision itself includes certification of a claim under s. 94(3) of the Nationality, Immigration and Asylum Act 2002, with the consequence, as stated immediately after the certification decision, that no appeal could be brought whilst the claimant remained in the United Kingdom. Before Judge Sweet, Counsel for the appellant managed to deploy arguments that the provisions of the letter were such as to give the appellant before him a right of appeal. That, despite Miss Foster's submissions today, we are satisfied was wholly wrong. The certificate is entirely unambiguous. The terms of it, the statutory provision for it, and its consequences, are clearly set out in the decision letter. There can be no doubt that the consequence of reading this letter is the conclusion that the Secretary of State has certified the claim. The judge therefore erred, by thinking that there could be an in-country right of appeal against the decision. That, however, is not in our judgment, the end of the matter, because it appears to us that the judge made a further error. The error was in thinking that there was a decision at all.

3. The provisions of the Immigration (Notices) Regulations 2003 (as amended) require that notice be given containing certain content in relation to any decision which is appealable. The decision which the Secretary of State purported to make on 20 March 2016 was not subject to any right of appeal in-country, but was appealable in the sense that the claimant had the right to appeal against it from outside the United Kingdom within 28 days after leaving the United Kingdom.

4. The notice of decision, instead of containing the rights of appeal of a person outside the United Kingdom, indicates, entirely wrongly, that the applicant could appeal against the decision within 14 days of the notice. There is no mention in the communications between the Secretary of State and the claimant of any right to appeal against the decision after leaving the United Kingdom or any time limit given for that.

5. It therefore follows that the notice given is not one which complied with the Notices Regulations. Mr Jarvis has drawn our attention to the decision of the Court of Appeal in E1 (OS Russia) v SSHD [2012] EWCA Civ 357 in which a notice similarly failing to indicate a right of appeal was considered by the Court of Appeal under the general head of whether there had been substantive compliance with the Notices Regulations. It is fair to say that

Mr Jarvis did not rely with great vigour on either the decision of the Court of Appeal or its reason; that was a case in which the facts were very different and where, in particular, the omission was, if we may so put it, the other way around, that is to say the notice failed to indicate the possibility of an in-country right of appeal in the case of a person who under certain circumstances would have had one. It seems to us that the principal purpose of the Notices Regulations is to give notification of such rights of appeal as exist. The notice in the present case was not one which began to comply with that requirement: it notified only the circumstances for a right of appeal which did not exist and failed wholly to set out the terms under which a right of appeal which did exist, could be exercised.

6. We conclude that the judge therefore should have appreciated that this notice was in fact not a notice at all, and so the starting point for his consideration was not met. It follows from that, first, that we find that the judge erred in law; secondly, we **set aside** his decision: there was no jurisdiction to hear an appeal from this claimant whilst she remained in the United Kingdom; but there was also, in any event, no jurisdiction to hear an appeal from this purported decision. It follows from what we said at the beginning of this determination that the claimant's leave continues under s. 3(C) because she awaits a lawful decision on her application.

7. That will inevitably mean that the Secretary of State needs to make a new decision on the application made on 1 December 2015. It may well be that since the application; there have been developments in the circumstances of the claimant and her partner. No doubt the Secretary of State will wish to take those into account before making any new decision and we think it is therefore appropriate to indicate that she should take into account any material that is presented to her within the next **14 days**.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 21 September 2017