



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/08240/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 27 April 2017

**Decision &
Promulgated**

On 3 May 2017

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**SHARAF SAMIUR RAHMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. R. Sharma, Counsel, instructed by Hunter Stone Law
For the Respondent: Mr. P. Nath, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the notice of First-tier Tribunal Judge Grant, promulgated on 7 March 2016, in which she struck out the Appellant's appeal against the Respondent's decision to remove the Appellant from the UK as not valid.
2. Permission to appeal was granted as follows:

"There is no Reasons for Refusal letter in the bundle and no mention in the Judge's Record of Proceeding of any Pre-Action Protocol letter or article 8 claim. However, the letter from A's representatives dated 4 September 2014 clearly states on page 9 that "it is further contended that the SSHD's

decision to serve the removal notice on our client is a breach of our client's rights under Article 8 of the European Convention on human rights", and goes on to give details of A's private life. The article 8 claim was also mentioned at page 7 of the representative's letter dated 10 February [2015]. As both of these letters predate the immigration decision, were directly addressed to the Secretary of State and were not certified in the immigration decision, it is therefore arguable that the Judge erred as to the implications of Mahesh Nirula on the facts of this case."

3. The Appellant attended the hearing. I heard brief oral submissions from Mr. Sharma. Mr. Nath did not take issue with his submissions and stated that he was satisfied that the Appellant had an in-country right of appeal.
4. I stated that was in agreement with both parties that the notice should be set aside as the First-tier Tribunal had jurisdiction to hear the appeal, and that my full reasons would follow.

Error of Law Decision

5. The notice of Judge Grant does not set out the chronology of the Appellant's case, or give any reasons for finding that there was no jurisdiction to hear the appeal. It is therefore necessary to set out a chronology here.
6. On 28 August 2014 the Respondent made a decision to remove the Appellant from the UK. On 4 September 2014 the Appellant's representatives wrote to the Respondent. On page 9 it states "It is further contended that the SSHD's decision [to] serve the removal notice on our client is a breach of our client's rights under Article 8 of the European Convention for Human Rights (ECHR)".
7. The skeleton argument refers to further correspondence from the Appellant's representatives to the Respondent dated 24 October 2014. I do not have a copy of this letter.
8. On 10 February 2015 the Appellant's representatives wrote to the Respondent in a letter headed "Judicial Review - Pre Action Protocol Letter". At [22] it states: "In these circumstances any removal will be a disproportionate breach of the UK's obligation under Article 8 of the ECHR."
9. On 27 February 2015 the Respondent wrote to the Appellant stating that her decision dated 28 August 2014 had been withdrawn. A new removal decision was made dated 17 February 2015. It is this decision which is under appeal.

10. I find that, prior to the decision under appeal dated 17 February 2015, the Appellant had at least twice raised human rights grounds with the Respondent. As stated above, I do not have a copy of the letter dated 24 October 2014, but this is not material as I have clear evidence before me that the Respondent was twice informed by the Appellant that he was raising human rights grounds.
11. I find that the pre-2014 amendment version of the 2002 Act applies to this appeal, given the date of the notice of decision.
12. I have considered the case law set out in the skeleton argument. I find that, following Shehzad [2016] EWCA Civ 615, and Nirula [2012] EWCA Civ 1436, the Appellant “had made” a human rights claim prior to the initiation of his appeal. Indeed, I find that he twice made a human rights claim prior to the issuing of the Respondent’s decision of 17 February 2015. There is express reference to Article 8 of the ECHR in both of the letters before me which predate the Respondent’s decision.
13. Given that the Appellant had made a human rights claim, I find that he has an in-country right of appeal, as was agreed by Mr. Nath. I therefore find that the First-tier Tribunal erred in striking out the grounds of appeal on the basis that the Appellant had no valid appeal. I find that the First-tier Tribunal had jurisdiction to hear the appeal.
14. Given that the Appellant has not had a hearing, I find that it is appropriate to remit the appeal to the First-tier Tribunal to be heard.

Decision

15. The notice involves the making of a material error of law and I set it aside.
16. The Appellant has made a human rights claim and has an in-country right of appeal. Accordingly the First-tier Tribunal have jurisdiction to hear the appeal. The appeal is remitted to the First-tier Tribunal.
17. No anonymity direction is made.

Signed

Date 28 April 2017

Deputy Upper Tribunal Judge Chamberlain