IAC-AH-VP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/08505/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 7 October 2014	**On 21 October 2014**

Before

UPPER TRIBUNAL JUDGE PITT
DEPUTY UPPER TRIBUNAL JUDGE GIBB

Between

SANTOSH KUMAR PISIKE
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Salanki, Counsel, instructed by Farani Javid Taylor Solicitors
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against a decision by Designated First-tier Tribunal Judge Manuell that there was no valid appeal against a removal decision taken under section 10 of the Immigration and Asylum Act 1999.

2. The appellant, having been in the UK since 2007 as a student, applied for leave to remain for two years for post-study work. This was refused on the basis that a false document had been submitted, namely a letter from Kensington College of Business stating that the appellant had been awarded a Masters in Business Administration (MBA). A refusal letter was accompanied by two notices (IS151A and IS151A Part 2). These notices indicated that the appellant was a person who had used deception in seeking leave to remain; that any leave previously granted was invalidated through the operation of section 10(8) of the 1999 Act; and that an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 could only be pursued after the appellant had left the UK.

3. The grounds seeking permission to appeal argued that the Upper Tribunal had jurisdiction where a decision of the First-tier Tribunal declined jurisdiction, but where that decision had been given full consideration. The grounds went on to argue that the appellant had a right of appeal, with reference to sections 82 and 92 of the Nationality, Immigration and Asylum Act 2002.

4. Permission to appeal was granted by First-tier Tribunal Judge Ransley, on 18 August 2014, on the basis that it was arguable that the immigration decision in question was a refusal to vary leave with the result that the person concerned was left with no leave to enter or remain (section 82(2)(e) of the 2002 Act). On this basis it was arguable that there was an in country right of appeal, with reference to section 92 of the 2002 Act.

5. At the start of the hearing we indicated to the parties that we were aware of a number of cases heard at Taylor House in which similar issues, as far as the merits were concerned, had been considered. Detailed evidence had been heard about the administrative failings at the Kensington College of Business, and in the majority of cases it had been decided that it had not been established that false documents had been submitted. The findings were concerned with administrative confusion at the Kensington College of Business, resulting in unreliable responses being given to requests for information to confirm which students had been on the MBA course.

6. Mr Wilding, for the respondent, produced copies of two cases relevant to the jurisdiction issue: **R (On the application of Mohamed Bilal Jan) v SSHD (Section 10 removal) IJR [2014] UKUT 00265 (IAC)**; and **R (On the application of RK) (Nepal) v SSHD [2009] EWCA Civ 359**.

7. We heard submissions from both representatives on the jurisdiction point, and reserved our determination.

8. We accept the submission made by Mr Wilding that the jurisdictional point at issue here is one that was decided in the **Bilal Jan** case, at paragraphs 33 and 34, with reference to the judgment in **RK (Nepal)**. As is clear from the passage from the judgment in **RK (Nepal)** quoted at paragraph 33 of

Bilal Jan, there were differing judicial interpretations on the issue, but that can no longer be said to be the case.

9. Ms Salanki, for the appellant, indicated her awareness of the **Bilal Jan** and **RK (Nepal)** cases, but did not engage with them in her submissions. The most that she could say, as a response to the section 10(8) invalidation point, was that section 82(2)(e) could be read in a simple and straightforward manner, on the basis that the actual impact of this decision was to refuse a variation application with the result of the appellant no longer having leave.

10. In our view this is no answer, in legal terms, to the authorities referred to by Mr Wilding. The legal mechanism here appears to us to be clear. It is that the decision to remove the appellant under section 10 of the 1999 Act, as a person who used deception in seeking leave to remain, had the effect of invalidating the appellant's previous grant of leave. Since the appellant's previous leave was invalidated the appellant cannot be said to have made an application for a variation of his leave at a time when he had valid leave. As a result no entitlement to an in country right of appeal arises. Another way of putting this is that the invalidation of the previous leave meant that the decision taken was not a refusal to vary leave (s82(2)(d)), because there was no leave to be varied, and was not a variation of leave (s82(2)(e)), for the same reason.

11. There was some discussion at the hearing as to the consequences of the jurisdiction point. Given what was said at the start, about the outcome of similar cases heard recently at Taylor House, the impact of section 10(8) of the 1999 Act could be said to be draconian given that the respondent's false document allegation may not stand up to scrutiny. There also appears to be an unattractive retrospective element to the operation of section 10(8), and its effect in depriving the appellant of an in country right of appeal. There was also some discussion of how or why it had come about that numerous similar cases had been decided in such a way that in country appeal rights were available, whereas this one was being decided in a way that deprived the appellant of an in country appeal right. All of these issues, however, are not directly relevant to the jurisdiction point, and they were also ventilated and decided in the **Bilal Jan** case. In summary that case decided that an out of country right of appeal was a sufficient remedy, and that there was no obligation for the Home Office to explain why other possible legal options had not been followed. There has also been a history of the development of the law surrounding section 47 removal decisions, which may explain different approaches taken in the past in similar cases.

11. Whilst there would be room for all of these matters to be considered at greater length the actual submissions before us were relatively narrow. In effect the submissions by Mr Wilding, relying on paragraphs 33 and 34 of the **Bilal Jan** decision, were unanswered. Upon that basis our decision is that it has not been shown that Designated Judge Manuell erred in law in

deciding that there was no valid appeal. Any appeal will only become valid if the appellant leaves the UK.

12. It was not suggested that there was any need for anonymity in this appeal, and neither do any issues as to appeal fees arise.

Decision

13. No error of law having been shown the judge's decision that there was no valid appeal remains undisturbed.

Signed Date: 20 October 2014

Deputy Upper Tribunal Judge Gibb