



Upper Tribunal
Immigration and Asylum Chamber

Appeal Number: IA/27119/2013

THE IMMIGRATION ACTS

Heard at Field House
On 21 March 2014

Promulgated on:
On 31 March 2014

Before

Upper Tribunal Judge Kekić

Between

**Rashed Khan
(anonymity order not made)**

Appellant

and

**Secretary of State for the
Home Department**

Respondent

Determination and Reasons

Representation

For the Appellant:

No appearance

For the Respondent:

Mr P Deller, Senior Home Office Presenting Officer

1. This appeal comes before me following the grant of permission by First-tier Tribunal Judge Nicholson in respect of the determination of First-tier Tribunal Judge Davidson who dismissed the appeal by way of a determination dated 30 January 2014.
2. The appellant is a citizen of Bangladesh born on 5 May 1989. His application for leave to remain as a Tier 1 Migrant was refused on 14 June 2013 and he

appealed that decision. There was no appearance for or by the appellant at the hearing before the First-tier Tribunal Judge and he proceeded in the appellant's absence, heard the respondent's submissions and then dismissed the appeal on the basis that the appellant had failed to show he had the required funds.

3. The appellant challenged the judge's decision. He adduced a copy of a letter dated 12 December 2013 from a presenting officer at Angel Square which confirmed that it had been decided to withdraw the Secretary of State's decision and that in accordance with paragraph 17(2) of the Procedure Rules 2005, the appeal would be treated as withdrawn. Not surprisingly the appellant was upset and his application for permission to appeal was granted.
4. A letter dated 4 March 2014 from the Specialist Appeals Team at Angel Square confirms that the decision was withdrawn prior to the hearing and that there was no appeal before the First-tier Tribunal.
5. There was no attendance by or on behalf of the appellant at the hearing before me on 21 March. Mr Deller submitted that as he was without the file, he did not know if the Presenting Officers' Unit had notified the Tribunal of the decision to withdraw but submitted that that had plainly be the intention and the appellant should not be prejudiced.
6. It is unfortunate that the Home Office Presenting Officer attending the hearing before the First-tier Tribunal on behalf of the Secretary of State was not informed of his colleague's decision. It is also unfortunate that the appellant's representatives, who would not have received any confirmation from the Tribunal that the appeal had been withdrawn, did not pursue the absence of such confirmation. The judge had no way of knowing that the decision had been withdrawn since neither party notified him of that, and not surprisingly he proceeded with the hearing in absence of the appellant. Be that as it may, the decision had been withdrawn by the respondent so there was in fact no appeal for the judge to hear in December. It follows that he had no jurisdiction to dismiss the appeal and his determination cannot stand.

Decision

7. The First-tier Tribunal Judge erred in law. His decision is set aside. There is no valid appeal before the Tribunal.

Signed:

Dr R Kekić
Judge of the Upper Tribunal
21 March 2014