



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
IA/34330/2013

Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7<sup>th</sup> August 2014**

**Determination  
Promulgated  
On 11<sup>th</sup> August 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HARRIES**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MRS PRABJIT KAUR RIAT  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr G Jack, Home Office Presenting Officer  
For the Respondent: Not present

**DETERMINATION AND REASONS**

**The Parties and Proceedings**

1. The appellant in the Upper Tribunal is the Secretary of State for the Home Department. The respondent is a national of born India on 11<sup>th</sup> July 1988; she is referred to hereafter as the claimant. She appealed before First-tier Tribunal Judge Roopnarine-Davies (the Judge) against

the decision of the Secretary of State made on 24<sup>th</sup> June 2013 to refuse to vary her leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) and to remove her from the United Kingdom by way of directions under section 10 of the Asylum and Immigration Act 1999, as notified on 28<sup>th</sup> July 2013.

2. The Judge determined the appeal after a hearing date on 3<sup>rd</sup> April 2014 at which neither the claimant nor a representative for the Secretary of State appeared. She dismissed the appeal for variation of leave under the Immigration Rules but found the decision under section 10 of the Asylum and Immigration Act 1999 to be not in accordance with the law so that it remained outstanding for the Secretary of State to make a lawful decision.
3. On an unspecified date permission to appeal to the Upper Tribunal against the section 10 aspect of the Judge's decision was granted out of time to the Secretary of State by Upper Tribunal Judge Renton for the following reason:

"...the Judge allowed the appeal to the extent of finding the removal decision not to be in accordance with the law on the basis that s10 only applied to people who had overstayed. This is an arguable error of law as s10(1)(b) provides for removal where deception has been deployed when seeking leave to remain, and the Judge had dismissed the appeal partly under para 322(1A) of HC 395."

4. The matter accordingly came before me to determine whether the making of the decision in the First-tier Tribunal involved the making of an error on a point of law.

#### Consideration of Issues and Submissions

5. A representative for the Secretary of State appeared before me but the claimant and her representative did not appear. There was correspondence dated 6<sup>th</sup> May 2014 on the file from Pride Solicitors now instructed by the claimant requesting a copy of the First-tier Tribunal determination. The Secretary of State applied on 2<sup>nd</sup> June 2014 for permission to appeal and following the grant of permission both parties and Pride Solicitors were informed in a notice dated 1<sup>st</sup> July 2014 of the hearing date on 7<sup>th</sup> August 2014 at 2.00 pm at Field House. Notice was given that in the absence of a party or his representative at the hearing the Tribunal may determine the appeal in their absence.
6. There was no response from the claimant or her representative to the notice of hearing and there was no response under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 to the Secretary of State's notice of appeal; there was accordingly no indication of opposition to the appeal. In these circumstances I was satisfied that it was in the interests of justice to proceed with the hearing and I did so

on the basis of the following submissions on behalf of the Secretary of State.

7. Mr Jack relied on the grounds of appeal and submitted a copy of section 10 of the Immigration and Asylum Act 1999 as follows:

**10 Removal of certain persons unlawfully in the United Kingdom**

(1) A person who is not a British citizen may be removed from the United Kingdom, in accordance with directions given by an immigration officer, if—

(a) having only a limited leave to enter or remain, he does not observe a condition attached to the leave or remains beyond the time limited by the leave;

[(b) he uses deception in seeking (whether successfully or not) leave to remain by; or

(ba) his indefinite leave to enter or remain has been revoked under section 76(3) of the Nationality, Immigration and Asylum Act 2002 (person ceasing to be refugee);] or

(c) directions [.....] have been given for the removal, under this section, of a person [.....] to whose family he belongs.

8. Mr Jack submitted that the Judge had erred in law in her following findings at paragraph 5 of her determination:

5. The respondent's decision to remove the appellant under s10 of the 1999 Act is unlawful. The appellant is not an overstayer. Removal directions ought to have been issued under section 47 of the immigration, Asylum and Nationality Act 2006.

9. Mr Jack submitted that contrary to the Judge's finding section 10 of the 1999 Act was lawfully applied because the claimant had used deception as set out in section 10(1)(b). He submitted that the claimant had been duly notified on an IS.151A of her liability to removal for this reason under section 10 and he submitted and relied upon the notice dated 28<sup>th</sup> July 2013.

10. The Judge found, at paragraph 3 of her determination, that a letter dated 8<sup>th</sup> December 2012 submitted by the claimant in support of her appeal purporting to come from Habib Bank Ltd in Pakistan was false. She upheld the mandatory refusal by the Secretary of State of the application under paragraph 322(1A) because of the use of the false document. The Judge accepted the content of a document verification report from the Secretary of State in the absence of any rebuttal by the claimant that she had used a false document and had used deception in her application.

11. I am accordingly satisfied that the Secretary of State properly applied and notified the claimant of the intention to remove her by way of directions under section 10 of the 1999 Act because she had used deception in seeking leave to remain in the United Kingdom. The Judge's decision to dismiss the appeal for variation of leave under the Immigration Rules is not challenged and that aspect of the decision stands. However, I find that the Judge erred in law by finding the removal decision to be not in accordance with the law. I set aside that part of the decision and remake it by dismissing the appeal against the removal decision.

### Summary of Decisions

12. I find that the making of the decision in the First-tier Tribunal involved the making of an error on a point of law in relation to the removal decision under section 10 of the Immigration and Asylum Act 1999.
13. I set aside that aspect of the decision and remake it by dismissing the appeal against the removal decision.
14. This appeal to the Upper Tribunal by the Secretary of State succeeds.

### Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Signed

J Harries

Deputy Upper Tribunal Judge  
Dated: 8<sup>th</sup> August 2014

### Fee Award

The position remains that there is no fee award.

Signed

J Harries

Deputy Upper Tribunal Judge  
Dated: 8<sup>th</sup> August 2014