Upper Tribunal
(Immigration and Asylum Chamber)

THE IMMIGRATION ACTS

Appeal No: IA/45280/2013

Heard at Field House	**Determination Promulgated**
On 24 March 2014	**On 31 March 2014**

Before

UPPER TRIBUNAL JUDGE PITT

Between

AHMAD RASOOL BUTT

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Eaton, instructed by Appleby Shaw Solicitors
For the Respondent: Mr Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was born on 11 June 1980 and is a citizen of Pakistan.

2. On 20 July 2012 the appellant applied for leave to remain as a Tier 1 (Entrepreneur) Migrant. It is common ground that at that time he did not have leave to remain. His application was refused by the respondent on 17 October 2013.

3. The appellant appealed to the First-tier Tribunal which, in a determination promulgated on 27 January 2014 found that there was no jurisdiction.

4. The appellant then applied for permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Chohan on 20 February 2014. Thus the matter came before me. I heard submissions of both representatives and reserved my determination.

5. The essential issue in this appeal is whether the service of an IS151A form, as was issued to this appellant on 18 October 2013, amounts to an immigration decision affording an appeal right under s.82(2)(g) of the Nationality, Immigration and Asylum Act 2002.

6. It is my view that it does not.

7. In order for a decision to give rise to an appeal right under s.82(2)(g), it must be:

> a decision that a person is to be removed from the United Kingdom by way of directions under section 10(1)(a), (b), (ba) or (c) of the Immigration and Asylum Act 1999 (c.33) (removal of person unlawfully in United Kingdom)

8. The IS151A form is not "a decision that a person is to be removed". It is, as stated on the document, a "Notice to a Person Liable to Removal". It is the not the removal decision itself. Nothing on the face of the document served on 18 October 2013 indicates to the contrary.

9. Mr Eaton argued that the case of Singh (paragraph 320 (7A) – IS151A forms – proof) [2012] UKUT 00162(IAC) supported his submission that the IS151A form did amount to a decision that came within the provision of s.82(2)(g). I found that that Singh is authority for the opposite. It states in the second paragraph of the head note that:

> "Form IS151A does not require the recipient "to leave the United Kingdom." Such a requirement is made, for example, by Form IS151B."

10. The status of the Form IS151B referred to in Singh is set out in the respondent's Enforcement Instructions and Guidance (Chapter 7) and as the same section further clarifies the correct status of Form IA151A, I set it out here:

> "The procedures to be followed once authority to serve papers is obtained are as follows:
> Serve form IS151A – (Notice that a person is to be treated as an illegal entrant/a person liable to administrative removal under section 10 of the 1999 Act). This informs the person that they are an illegal entrant/immigration offender and they are liable to removal and detention.

> Serve immigration decision to remove, either
> IS151A part 2 – (Notice of decision to remove an illegal entrant/ a person liable to administrative removal) This notice informs a person that a decision has been made to remove them from the UK and that they can appeal against this decision but only from outside the UK : or
>
> IS151B - (where asylum or Human Rights claim has been refused) this notice informs a person that a decision has been made to remove them from the UK and that their asylum/human rights claim has also been refused. It notifies them that they have an "in-country" right of appeal against the decision.
>
> For both the IS151A part 2 and the IS151B it is possible to specify more than one country to which the person may be removed. This is for disputed nationality cases, dual nationals etc."

11. Thus, Form IS151A only "informs the person that they are an illegal entrant/immigration offender and they are liable to removal and detention." As identified in Singh, only the further step of service of Form IS151A part 2 or Form IS151B following service of Form IS151A constitutes an immigration decision to remove.

12. There was no argument before me that either a Form IS151A part 2 or Form IS151B have been served on this appellant. There is therefore no decision which affords him an appeal right.

13. Although set out relatively simply above, this point and its answer does not arise so easily from the history of this matter.

14. Firstly, the respondent's refusal letter dated 17 October 2013 told the appellant that he had an out of country appeal. He did not. As above, he had no appeal right at all.

15. Secondly, even though he was informed (wrongly) that he had only an out of country appeal, the appellant made an in country appeal.

16. Thirdly, the First-tier Tribunal Duty Judge correctly queried jurisdiction and asked for information from the appellant's legal advisers. They replied in a letter dated 14 November 2013 that:

> "The Appellant's application was refused on 18 October 2013 without a right of appeal however, the Appellant has been served with a Section 10 Notice which has triggered an in country right of appeal under Section 82(2)(g). The Appellant was also given a Form IAFT1 to exercise the same."

17. That letter is incorrect in a number of regards. The refusal letter did not state that there was no right of appeal. As above, it erroneously stated that there was an out of country appeal. The appellant was not served with a "Section 10 Notice" affording him an appeal right for the reasons set out above. I also wondered if it could be right that the respondent provided the appellant with Form IAFT1 which relates to an in country right of appeal rather than IAFT3, the form for an out of country appeal. I cannot say whether or not the respondent routinely issues appeal forms to those

whose applications are refused or whether the respondent's officer here, in error as to there being an appeal right at all, compounded that error by issuing appeal forms inconsistent with the right of appeal identified in the refusal letter. The appeal was lodged online with the Tribunal so any physical form provided to the appellant was not used. In any event, being issued with an appeal form could not amount to the appellant being given an appeal right on which he was entitled to rely.

18. Fourthly, although First-tier Tribunal Maxwell correctly identified at [3] of his determination that the appellant had not received a decision affording him a right of appeal to the Tribunal, the point was not litigated before him at all so the appellant had no opportunity to address it.

19. Fifthly, following the grant of permission to appeal, the respondent provided a Rule 24 letter dated 5 March 2014. This conceded the appeal to the Upper Tribunal on the basis of procedural error as there had been no opportunity to address the jurisdiction point before Judge Maxwell. On the day of the hearing before me, Mr Melvin withdrew the Rule 24 letter, maintaining that Judge Maxwell had been correct and that no material error arose.

20. Be all those factors as they may, for the reasons set out above, it is my settled view that this appellant did not and does not have a right of appeal to the Tribunal.

21. It is also my view, however, that even though his legal analysis was correct, a clear procedural error occurred when Judge Maxwell failed to give the appellant an opportunity to address that matter at the hearing on 16 January 2014.

22. Having found what amounts to an error of law, under section 12 (2) (a) of the Tribunals, Courts and Enforcement Act 2007, I "may (but need not) set aside the decision of the First-tier Tribunal".

23. This is not an appeal where it is appropriate for me to set aside the decision of Judge Maxwell. If I did so, the appellant would still be in exactly the same position, without an appeal right and any remaking would immediately be void for want of jurisdiction. I therefore decline to set aside the decision of the First-tier Tribunal.

DECISION

18. The decision of the First-tier Tribunal does not disclose an error on a point of law such that it should be set aside and it shall stand.

Signed:  Date: 24 March 2014

Upper Tribunal Judge Pitt