



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/20611/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 30 July 2014**

**Determination
Promulgated
On 5 August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR ZOHAIB SHAMIN SIDDIQUI
(NO ANONYMITY ORDER MADE)**

Respondent/Claimant

Representation:

For the Appellant: Mr N. Bramble, Specialist Appeals Team
For the Respondent: none

DETERMINATION AND REASONS

1. The SSHD appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Symes sitting at Richmond on 29 April 2014) allowing the claimant's appeal against the decision by the SSHD to refuse to vary his

leave to remain in the United Kingdom as a Tier 4 Student Migrant, and to make directions for his removal.

2. The ground of refusal was that on 13 August 2013 he had been encountered working illegally, and so his application was refused under paragraph 322(3) for a failure to comply with conditions attaching to his leave to enter as a student. In the refusal notice dated 14 August 2013 he was informed that he had no right of appeal.
3. The claimant was removed on 12 October 2013, and appealed out of country on 30 October 2013. His case was that he had been misled by his college into thinking that he was allowed to work. He asked that he be granted another visa.
4. Judge Symes proceeded with the hearing on the false understanding that the claimant had proposed voluntary departure, but no arrangements had been made (paragraph 4). So he believed that the claimant was still in the country, albeit that he had not made an appearance. He accepted the explanation given by the claimant in his grounds of appeal, and allowed his appeal against the refusal to vary his leave on the ground that the decision was not in accordance with the law as there was no sign in the refusal letter that the decision-maker had recognised the existence of the discretion inherent in Rule 322. He also allowed the appeal against removal on the same ground.
5. Permission to appeal on error of law grounds was granted by Judge Colyer on 23 June 2014.

Discussion

6. The decision to remove the claimant was made on the 13 August 2013, which was the day before his extant application for leave to remain was refused. It was for this reason that he had no right of appeal against the refusal to vary leave, as the effect of the decision to give directions for his removal invalidated any leave to enter or remain in the UK which was given to him before the directions were given. So the judge had no jurisdiction to hear an appeal against the refusal to vary the claimant's leave, and he erred in law in holding that the claimant's application to vary leave to remain remained outstanding before the Secretary of State for a lawful decision.
7. The judge also erred in law in allowing the appeal against removal on the ground that "there can be no power to remove a person where there their variation application was inadequately dealt with". The judge failed to recognise that the removal decision preceded the decision to refuse to vary the claimant's leave.
8. It is acknowledged in the SSHD's grounds of appeal to the UT that the claimant had an out of country right of appeal against the removal decision. But the judge failed to recognise that the claimant had not in fact

purported to exercise a right of appeal against the removal decision. He had only sought to appeal against the decision to refuse to vary his leave.

Decision

The decision of the First-tier Tribunal contained an error of law, and accordingly the following decision is substituted: the claimant's appeal against the decision to refuse to vary his leave to remain is dismissed on the ground that he has no right of appeal against this decision.

Anonymity

The First-tier Tribunal made no anonymity order.

Signed

Date

Deputy Upper Tribunal Judge Monson