



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/08213/2014

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke  
On 13 May 2015

Determination Promulgated  
On 20 May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE PLIMMER

Between

JT  
ANONYMITY DIRECTION MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms Walker (Counsel)

For the Respondent: Mr McVeety (Home Office Presenting Officer)

**DECISION AND REASONS**

1. The appellant is a citizen of Sri Lanka who entered the UK with a valid visa on 14 September 2011. This was extended and her leave remained valid until 4 September 2014. The appellant claimed asylum on 16 April 2014 and this was refused by the SSHD after her leave expired on 3 October 2014 in a Notice of Decision headed 'Rejection of Asylum Claim'.
2. The appellant appealed against the decision to refuse asylum to the First-tier Tribunal. The difficulty with this, as both representatives before me agreed is well

known, is that a mere refusal of asylum without more, is not an immigration decision and does not carry with it a right of appeal.

3. In the Rule 24 submissions lodged on behalf of the SSHD it is said that the Notice of Decision relied upon section 83(2) of the Nationality, Immigration and Asylum Act 2002 i.e. the Notice of Decision states 'you are entitled to appeal this decision under section 83(2)...' Mr McVeety accepted this is plainly wrong. The appellant had not been granted leave for over a year at the time of the decision and section 83(2) simply does not apply. Mr McVeety also accepted, as conceded within the Rule 24 response, that the SSHD had not made an immigration decision in order to trigger a right of appeal pursuant to section 82 of the 2002 Act.
4. It appears that neither of the representatives raised this obvious jurisdictional issue with the Judge who heard the appeal. This is to be regretted. The appellant was represented by a different Counsel at that stage and the respondent by a different Home Office Presenting Officer. The Judge mistakenly considered that the appeal was being brought against a removal decision [3]. Mr McVeety confirmed that there has been no removal decision.
5. Mr McVeety therefore conceded that without a statutory right of appeal, the Tribunal has no jurisdiction and it must follow that the SSHD must make a new decision generating a right of appeal. Mr McVeety was correct to adopt this approach. An appeal under section 82 of the 2002 Act requires there to be an immigration decision, as there defined. Where no immigration decision has been made, the First-tier Tribunal has no jurisdiction to hear the appeal - Singh (No immigration decision-jurisdiction) [2013] UKUT 00440 (IAC). Mr McVeety made it clear that it was most regrettable that this issue was only being raised for the first time before the Upper Tribunal. He however properly acknowledged that representatives cannot concede jurisdiction where there is none - see Virk and others v SSHD [2013] EWCA Civ 652. It is also regrettable that the Judge considering the appeal did not check the immigration decision as set out within the guidance provided in Singh (supra) at [12].
6. The First-tier Tribunal did not have jurisdiction to consider the appeal and neither do I.

### **Decision**

7. The decision of the First-tier Tribunal involved the making of an error on a point of law.
8. The decision of the First-tier Tribunal is set aside and the decision re-made dismissing the appeal for want of jurisdiction.

Signed:

Ms M. Plimmer  
Deputy Judge of the Upper Tribunal

Date: 15 May 2015