



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

Appeal Number: IA/07874/2014

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 14<sup>th</sup> January 2015**

**Determination Promulgated  
On 27<sup>th</sup> January 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MR MUHAMMAD SHAHBAZ  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Pratt, Solicitor

For the Respondent: Mr A McVeety

**DECISION AND REASONS**

1. The Appellant is a citizen of Pakistan born on 1<sup>st</sup> January 1991.
2. On 4<sup>th</sup> February 2014 a decision was made to remove the Appellant from the UK. The Appellant appealed against that decision. The appeal came before Judge of the First-tier Tribunal Ransley sitting at Manchester on 23<sup>rd</sup> June 2014. In a determination promulgated on 30<sup>th</sup> June 2014 the Appellant's appeal was allowed under the Immigration Rules.
3. The Secretary of State appealed to the Upper Tribunal. There were two Grounds of Appeal. Firstly it was contended there was no jurisdiction to

hear the appeal, secondly the judge had made a material misdirection in law without referring to the authority of *Sabir (Appendix FM - EX.1 not freestanding) [2014] UKUT 63 (IAC)* all of provisions of Appendix FM.

4. On 8<sup>th</sup> August 2014 Judge of the First-tier Tribunal Davidge refused permission to appeal. The Grounds of Appeal were renewed and expanded upon on 19<sup>th</sup> August 2014. On 13<sup>th</sup> November 2014 Upper Tribunal Judge Clive Lane granted permission to appeal. Judge Lane considered that the grounds as regards the jurisdiction of the First-tier Tribunal to hear the appeal in-country were arguable. On 4<sup>th</sup> December 2014 a Rule 24 response was filed and served by the Appellant's solicitors. It is appropriate to recite in its entirety paragraph 2 of that Rule 24 response and set it out. In the circumstances as it would appear that there is no in-country right of appeal in this matter it is not open to the Appellant to withdraw a non-existent in-country appeal. That said, "the Appellant has no objection to this matter being terminated at this stage".
5. It is on that basis that the appeal comes before me. The Secretary of State appears by her Home Office Presenting Officer Mr McVeety. This is an appeal by the Secretary of State and for the purpose of continuity throughout legal proceedings Mr Shahbaz is herein described as the Appellant and the Secretary of State as the Respondent. Mr Shahbaz appears by his instructing solicitor Mr Pratt. Mr Pratt is familiar with this matter having appeared before the First-tier Tribunal and also by being the author of the Rule 24 response.

### **Submissions/Discussions**

6. Mr McVeety submits that the First-tier Tribunal Judge did not have jurisdiction to hear the appeal and that I should find that there has been therefore a material error of law and set aside the decision. He comments (and I agree) that no criticism can be levelled at the First-tier Tribunal Judge and that it was the responsibility of the Secretary of State to draw this matter to her attention. Mr Pratt acknowledges that the jurisdictional point is well made, and does not seek to go behind his Rule 24 response.

### **The Law**

7. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
8. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising

after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

### **Findings on Error of Law**

9. It is clear from the position set out herein that the First-tier Tribunal Judge did not have jurisdiction to hear this matter. The Appellant had been served with an IS151A Part 2 Notice of Immigration Decision. This is the decision to remove him from the United Kingdom. Consequently the decision is one pursuant to Section 82(2) of the Nationality, Immigration and Asylum Act 2002 and is appealable only out of country. The Appellant attended before the First-tier Tribunal and gave evidence. There was no jurisdiction before the First-tier Tribunal Judge in such circumstances to hear the appeal. In such circumstances I do not need to look at any submissions beyond the jurisdictional point.

### **Notice of Decision and Remaking of Decision**

The decision of the First-tier Tribunal contained a material error of law on the basis that the First-tier Tribunal Judge did not have jurisdiction pursuant to statute to hear the appeal. In such circumstances having found that there is a material error of law I remake the decision dismissing the appeal to Immigration Judge Ransley and reinstating the decision of the Secretary of State.

The First-tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. No application is made to vary that order and none is made.

Signed  
Deputy Upper Tribunal Judge D N Harris

Date **27<sup>th</sup> January 2015**

### **TO THE RESPONDENT** **FEE AWARD**

No application is made for a fee award and none is made.

Signed  
Deputy Upper Tribunal Judge D N Harris

Date **27<sup>th</sup> January 2015**