



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

Appeal Number: IA/25714/2014

THE IMMIGRATION ACTS

**Heard at Field House, London
On 10 June 2015**

**Determination Promulgated
On 12 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

ISLAMKHANOV ANVAR

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr J Markus, instructed by Turpin & Miller solicitors

For the respondent: Ms A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a national of Russia, appealed to the First-tier Tribunal against the decision of the Secretary of State dated 25 July 2013 to remove him from the UK. First-tier Tribunal Judge Thorne dismissed the appeal on the basis that there was no valid appeal. The appellant now appeals with permission to this Tribunal.
2. In summary the background to this appeal is that the appellant claimed asylum in the UK on 13 March 2013 having arrived in the UK from Cyprus where he had previously claimed asylum. The Secretary of State made a formal request to the Cypriot authorities to accept responsibility for the consideration of the appellant's asylum claim under the Dublin II

Regulations and a formal letter of acceptance was received from the Cypriot authorities on 20 May 2013.

3. The Secretary of State issued a decision dated 25 July 2013 to refuse the appellant's application for leave to enter the UK and to remove him to Cyprus. The Secretary of State also issued a reasons for refusal letter dated 26 September 2013 informing the appellant that his claim had been certified under schedule 3, Part 2 paragraph 5 (4) of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 and that he could appeal against that decision after he had left the UK. The appellant challenged that decision by seeking permission to apply for Judicial Review and in advance of a hearing the respondent agreed to withdraw her decision of 26 September 2013 and to make a new decision on the appellant's human rights claim. The appellant appealed against the decision to refuse leave to enter dated 25 July 2013. His appeal was received by the Tribunal on 17 June 2014 and on 15 July 2014 First-tier Tribunal Judge Freestone found that there were special circumstances and extended the time limit so as to admit the appeal in view of the procedural history of the case.
4. The appeal came before First-tier Tribunal Judge Thorne on 2 October 2014. Whilst the parties initially agreed that there was no valid appeal as the decision had been withdrawn later that day the appellant's representative returned to submit that there was in fact a valid appeal as the respondent had not withdrawn the decision to refuse leave to enter. Although he accepted that there had been some confusion as to when the removal decision had been withdrawn, the First-tier Tribunal Judge decided that at all material times it was the settled and clear intention of the Secretary of State to withdraw the removal decision. The Judge therefore found that there was no decision and no valid appeal.
5. The appellant applied for permission to appeal to the Upper Tribunal on the grounds that the Judge erred in concluding that there was no valid decision because the decision to refuse leave to enter had not in fact been withdrawn. Permission was refused by the First-tier Tribunal but was granted by the Upper Tribunal on renewal on the basis that it was arguable that the Secretary of State had not withdrawn the appealable decision. In her Rule 24 response the Secretary of State accepted the appellant's submissions and accepted that the disposal of the Judicial Review proceedings did not state that the immigration decision was also being withdrawn.
6. The respondent therefore concedes that there is an error of law in the decision of the First-tier Tribunal. I am satisfied on the basis of the evidence before me, taking into account this concession, that the First-tier Tribunal Judge erred in finding that there was no decision and no valid right of appeal. I therefore set aside the decision of the First-tier Tribunal.

7. At the hearing before me Ms Everett accepted that there were no grounds to challenge the decision of Judge Freestone to admit the late appeal as indicated on the rule 24 response.
8. Both representatives requested that, as there is an extant appeal which has not yet been determined by the First-tier Tribunal, the appeal be remitted to the First-tier Tribunal. They drew my attention to a fresh decision issued by the respondent dated 17 November 2014.
9. I am satisfied that the appellant has not had his case properly considered by the First-tier Tribunal. The nature and extent of the judicial fact finding which is necessary in order for the decision to be remade is such that (having regard to the overriding objective in Rule 2 of the Upper Tribunal Procedure Rules 2008) it is appropriate to remit the case to the First-tier Tribunal.

Decision

The Judge made an error on a point of law and the determination of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal to be remade.

Signed

Date: 10 June 2015

A Grimes

Deputy Upper Tribunal Judge