



IAC-AH-KRL-V1

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

Appeal Number: IA/31949/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3 March 2016**

**Decision & Reasons Promulgated  
On 29 March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW**

**Between**

**MR ABDULLAH MUHAMMAD  
(ANONYMITY DIRECTION NOT MADE)**

**Appellant**

**and**

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

**Respondent**

**Representation:**

For the Appellant: Mr A Magsood of Counsel  
For the Respondent: Mr C Avery, a Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal by the appellant against a decision of the First-tier Tribunal dismissing his appeal against a decision of the respondent taken on 29 July 2014 to

refuse his application for leave to remain in the United Kingdom on the basis of his family life with his wife.

### **Background Facts**

2. The appellant is a citizen of Pakistan and was born on 8 January 1991. The appellant entered the UK in 2009. He was granted leave to remain in the United Kingdom until 31 May 2014 as a Tier 4 Migrant to study at the London College of Law and Management. On 28 July 2012 the Secretary of State decided to curtail the appellant's leave on the basis that the sponsor licence for the appellant's college had been revoked. He therefore ceased to meet the requirements of the Immigration Rules under which his leave had been granted.
3. On 30 May 2014 the appellant applied for leave to remain in the United Kingdom on the basis of his family life with his wife. The respondent refused the application on 29 July 2014 having considered the application under paragraph EX.1 of the Immigration Rules. The Secretary of State considered that there were no insurmountable obstacles to his family and private life continuing in Pakistan. The respondent also considered the appellant's private life under paragraph 276ADE of the Immigration Rules. She considered that there would not be very significant obstacles to family life continuing with his wife in Pakistan. The Secretary of State also considered whether or not there were any exceptional circumstances that would warrant a grant of leave to remain in the United Kingdom outside of the Immigration Rules. The Secretary of State acknowledged that the appellant had raised concerns about how his relationship would be received in Pakistan on the basis that he is Muslim and his wife is a Christian and that he did not believe that his partner would be safe as a British citizen in Pakistan. The Secretary of State did not consider that these claims represented insurmountable obstacles to family life continuing in Pakistan and that it was also possible for the appellant to return to Pakistan and attempt to re-enter the UK with valid entry clearance in order to continue family life in the UK. The respondent set out in the Reasons for Refusal Letter that as the appellant's leave to remain was curtailed to 26 September 2012 the appellant did not have leave to remain in the UK at the time of his application and therefore there was no right of appeal against the decision.

### **The Appeal to the First-tier Tribunal**

4. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 8 December 2014, First-tier Tribunal Judge S J Pacey dismissed the appellant's appeal. The First-tier Tribunal found that although the respondent had not provided anything to demonstrate how the letter of 28 July 2012 was communicated to the appellant, in considering all the evidence before the judge he accepted that proper notification of the curtailment of leave was given. The judge therefore decided that the appellant had no right of appeal from the respondent's decision of 29 July 2014.

## **The Appeal to the Upper Tribunal**

5. The appellant sought permission to appeal to the Upper Tribunal. On 26 January 2015 First-tier Tribunal Judge Wellesley-Cole refused permission to appeal. The appellant renewed his application for permission to appeal to the Upper Tribunal and on 4 May 2015 Upper Tribunal Judge Chalkley granted permission to appeal. The grant of permission sets out that the judge may have erred by failing to properly apply **Syed (curtailment of leave – notice) v SSHD [2013] UKUT 0014 (IAC)**. Thus, the appeal came before me.

## **Summary of Submissions**

6. The grounds of appeal assert that the First-tier Tribunal Judge erred in failing to apply the principles in the case of **Syed** correctly. It is asserted that the respondent has failed to discharge the burden of proving when and how she sent the letter and therefore has failed to discharge the burden of establishing that the letter was actually served on the appellant. It is asserted that the First-tier Tribunal Judge was wrong to rely on the fact that there was no evidence to indicate that the letter was returned to the respondent marked not delivered.

## **The Respondent's Submissions**

7. The respondent served a Rule 24 (of the Tribunal Procedure (Upper Tribunal) Rules 2008) response. The respondent asserts that an attempt was made to notify the appellant of the decision to curtail his leave on 27 July 2012 and was sent via recorded delivery to an address in Hounslow. It is asserted that the judge made a finding that the appellant did not take the exams because he was aware of the curtailment of his leave and did not attend college. The judge was entitled to draw the inference that the appellant was aware that the college's licence was revoked and that his leave was curtailed. On that basis the application was out of time.

## **The Hearing Before the Upper Tribunal**

8. At the commencement of the hearing Mr Avery informed me that, when preparing for the appeal hearing, he had checked the records held by the Secretary of State. In those records he came across a note dated September 2012 indicating that the package containing the letter of curtailment was returned endorsed with a note saying that the addressee had gone away. Mr Avery conceded that in view of the requirements set out in the case of **Syed** the procedures were not acceptable and there could be no deemed service. Mr Avery accepted that the appellant had not been served with a curtailment notice and therefore his leave had not been validly curtailed. On this basis Mr Avery indicated that it was his submission that the best option was for the case to be remitted to the First-tier Tribunal. Mr Magsood indicated his agreement that, on the basis of the fact-finding requirements, the most appropriate course of action was for the appeal to be remitted for findings to be made by the First-tier Tribunal.

9. In light of the Secretary of State's concession and the information helpfully provided by Mr Avery the First-tier Tribunal's decision cannot stand. The appellant's leave had not been curtailed, his application for leave to remain was made whilst he had extant leave and he therefore had a right of appeal against the decision of the Secretary of State. The First-tier Tribunal's decision contains a material error of law.
10. The First-tier Tribunal, quite rightly in the circumstances of the case, did not go on to consider or make any findings with regard to the substantive aspects of the appellant's appeal and therefore a full fact-finding hearing is required.
11. I remit the matter to the First-tier Tribunal. I find that the appellant does have a right of appeal in this case on the basis that his application was not made out of time because he was never notified of the curtailment of his leave.
12. I find that there is a material error of law in the First-tier Tribunal's decision and I set aside that decision pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 ('TCEA').
13. I have considered the Practice Statement concerning transfer of proceedings. I am satisfied that the nature and extent of judicial fact finding that is necessary in order for the decision in the appeal to be re-made is such, having regard to the overriding objective, it is appropriate to remit the matter to the First-tier Tribunal.
14. I remit the case to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the TCEA. The date of the hearing to be fixed at the next available opportunity.

**Notice of Decision**

15. The appellant's appeal is allowed. The appellant has a right of appeal against the respondent's decision because no notification of curtailment of his leave was received by the appellant and therefore the appellant's application for leave to remain in the United Kingdom was made in time. The case is remitted to the First-tier Tribunal to be heard on the next available date.
16. No anonymity direction is made.

Signed *P M Ramshaw*

Date 13 March 2016

Deputy Upper Tribunal Judge Ramshaw