



ST

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

Appeal Number: IA/32735/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated  
On 12 April 2016**

**On 30 March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE A M BLACK**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**N M P  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr Duffy, Home Office Presenting Officer  
For the Respondent: Mr Graham, Counsel

**DECISION AND REASONS**

1. The appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were known before the First-tier Tribunal, when the Secretary of State was the respondent.
2. The appellant is a citizen of India born on 18 June 1989. He appealed against the decision of the respondent on 5 August 2014 to remove him from the United Kingdom under s10 of the Immigration and Asylum Act 1999. His appeal was allowed by First-Tier Tribunal Judge D Ross in a decision and reasons promulgated on 9 September 2015.

3. The respondent sought permission to appeal. This was granted by First-tier Tribunal Judge M Robertson. His reasons for so doing are follows:
  - “1. The Respondent seeks permission, in time, to appeal against the decision of First-tier Tribunal Judge D Ross (the Judge), allowing the Appellant’s appeal under the Immigration Rules against the Respondent’s decision to remove him from the UK as an Immigration Offender pursuant to the provisions of s10 of the Immigration and Asylum Act 1999. The Appellant had leave to remain as student [sic] and the reason given by the Respondent for removal under the 1999 Act was that the Appellant had used deception to gain entry to the UK because information provided by the Educational Testing Service established an anomaly with the speaking test indicated by the presence of a proxy. There was no curtailment decision.
  2. The sole ground of appeal is that the Judge did not have jurisdiction to hear the appeal. This ground has arguable merit. It is clear from the notice of decision that the Respondent was of the view that the Appellant only had an out of country right of appeal, and the Duty Judge also confirmed that the issue of jurisdiction was to be considered as a preliminary point and this point was not considered by the Judge as a preliminary issue. While there is nothing to indicate that the Respondent’s representative raised the issue at the hearing, permission is granted on the basis of **Nirula v The First-tier Tribunal [2011] EWHC 3336 (Admin), R (on the application of Mohamed Bilal Jan) v SSHD (Section 10 removal) IJR UKUT 265 (IAC) and RK (Nepal) v SSHD [2009] EWA Civ 359** [sic].”
4. Thus the appeal has come before me.
5. Both parties agreed that the First-tier Tribunal Judge (FTTJ) should have considered as a preliminary issue whether he had jurisdiction to hear the appeal, this issue having been identified in the decision notice and grounds of appeal. In **Virk v SSHD [2013] EWCA Civ 652** it was held that although the Secretary of State had failed to raise before the First-tier Tribunal the issue of that Tribunal's jurisdiction to entertain a family's application for leave to remain, the Upper Tribunal was entitled to dismiss the family's subsequent appeal against the First-tier Tribunal's decision on the basis that the First-tier Tribunal had not had jurisdiction, notwithstanding that the point had not been raised below.
6. Mr Duffy for the respondent submitted the respondent’s decision dated 5 August 2014 was one within the meaning of s82(1)(g), Nationality, Immigration and Asylum Act 2002 (the 2002 Act), as it was prior to the changes implemented on 20 October 2014 as a result of s15 Immigration Act 2014. He submitted that the appellant was precluded by s92(1) and (2) of that Act from appealing against the decision whilst in the United Kingdom, there being no human rights claim. Mr Duffy submitted that the

FTTJ had had no jurisdiction to hear the appeal because it had been lodged whilst the appellant was still in the UK.

7. Mr Graham, for the appellant, relied on the grounds of appeal to the First-tier Tribunal. As regards the issue of jurisdiction, he accepted that the decision fell within the scope of s82(1)(g). The appellant's principal issue was that it had been "an affront to natural justice not to make a curtailment decision". He submitted that the respondent should have made a decision allowing an in-country right of appeal. That said, Mr Graham accepted that the FTTJ could not go behind the removal decision before him.
8. The sole issue for me to decide is whether the decision of the FTTJ contains a material error of law. I am satisfied it does, for the reasons given by Mr Duffy. A decision to remove pursuant to s10 automatically terminates any extant leave; it is not a decision to curtail leave under the Immigration Rules and so not a decision to vary leave as listed in s82(2) of the 2002 Act. It is a decision covered by s82(1)(g). Accordingly there is no in country right of appeal except on asylum and human rights grounds (**RK (Nepal)**) and s92(1) and (2) of the 2002 Act). The appellant did not make a human rights claim.
9. For this reason, the decision of the First-tier Tribunal contains a material error of law in that the FTTJ had no jurisdiction to hear the appeal, the appellant having remained in the UK. I set aside the FTTJ's decision in its entirety.

### **Decision**

10. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside.
11. I declare and determine that the First-tier Tribunal had no jurisdiction to hear the appeal. I do not remake the decision. It remains set aside.
12. Given that the issues addressed by the First-tier Tribunal remain unresolved, the appellant is entitled to anonymity in these proceedings.

Signed

**A M Black**

Date

1 April 2016

Deputy Upper Tribunal Judge A M Black

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed ***A M Black***

Date 1 April 2016

Deputy Upper Tribunal Judge A M Black