



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal No: HU/22639/2016  
HU/22647/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 28<sup>th</sup> November 2017

Decision and Reasons Promulgated  
On 7<sup>th</sup> December 2017

Before

Mr Justice Morris  
Upper Tribunal Judge Rimington

Between

Entry Clearance Officer, New Delhi

Appellant

And

MD Shofikul Islam  
MD Zahidul Islam

Respondent

**Representation:**

For the Appellant: Mr L Tarlow, Home Office Presenting Officer  
For the Respondent: Mr M K Mustafa instructed by Kalam Solicitors

**DECISION AND REASONS**

1. The application for permission to appeal was made by the Secretary of State but nonetheless for the purposes of this decision we shall refer to the parties as they were described before the First-tier Tribunal.
2. The appellants are citizens of Bangladesh and appealed against an Entry Clearance Officer's decision dated 15<sup>th</sup> September 2016 to refuse them Certificates of Entitlement to a Right of Abode ("the Decision"). Their appeals were allowed by First-tier Tribunal Judge Onofriou, in a decision promulgated on 7 September 2017 ("the FTT Decision").

3. The Entry Clearance Officer, through the offices of the Secretary of State appeals to the Upper Tribunal on the following ground. The applications were made on 1<sup>st</sup> September 2016. As of 6<sup>th</sup> April 2015 the appellants had no right of appeal under Section 82 of the Nationality Immigration and Asylum Act 2002. The appeal provisions had been amended. The appellants had not made protection, or human rights claims (or had any protection revoked) and therefore had no right of appeal from the outset. It was submitted that the First-tier Tribunal erred in law in entertaining the appeals.
4. At the hearing before us, Mr Mustafa accepted that there were no rights of appeal. He acknowledged that the grounds of appeal to the First-tier Tribunal did not engage any human rights grounds. Nonetheless he invited us to make a recommendation that the 'Appellants are the legitimate children of their parents pursuant to Section 1 of the Legitimacy Act 1976'.
5. Mr Tarlow commented that was 'not an unreasonable request', so that the matter may be put in full before a caseworker.
6. We reserved our decision.

#### Conclusions

7. A right of appeal to the Tribunal stems from Section 82 of the Nationality Immigration and Asylum Act 2002 as amended. A person may appeal to the Tribunal where the Secretary of State has decided to refuse a protection claim, a human rights claim or the Secretary of State has decided to revoke a person's protection status. In the present case, the appellants' original application did not amount to a claim in the first two categories and the Secretary of State has not revoked the appellants' protection status.
8. The applications were made for a Certificate of Right of Abode on 1<sup>st</sup> September 2016 and therefore after the implementation of the amendment made to the basis of an appeal in the Nationality Immigration and Asylum Act 2002.
9. The *applications* were indeed made for Certificates of Entitlement to a Right of Abode *not* on any protection or human rights basis. As such we have no founding decision on which to base any jurisdiction. Albeit that the decision of the Entry Clearance Officer purported to furnish the appellants with a restricted right of appeal, nowhere in the grounds of appeal to the First-Tier Tribunal were any human rights grounds advanced.
10. In conclusion, as indicated in the Entry Clearance Officer's grounds of appeal, the appellants had no right of appeal against the Decision to the First-Tier Tribunal. It follows that his consideration of the appeal was outwith his jurisdiction and his ensuing decision a nullity.
11. Since there was no valid appeal to the First-Tier Tribunal, we consider that it is not appropriate for us to make any recommendation or comment about the underlying

merit of the appellants' claim (assuming we have power to do so). We have nevertheless recorded the Secretary of State's observations at paragraph 5 above.

**Decision**

It is declared that:

- (a) The First-Tier Tribunal had no jurisdiction to entertain the Respondents' appeal against the decision of the Entry Clearance Officer dated 15 September 2016 to refuse their Certificates of Entitlement to a Right of Abode.
- (b) The decision of First-Tier Tribunal Judge Onoufriou dated 7 September 2017 is a nullity.

Signed

*Helen Rimington* Signed 28<sup>th</sup> November 2017

Upper Tribunal Judge Rimington

Dated 6<sup>th</sup> October