



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

Appeal Number: PA/01477/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 July 2017**

**Decision and Reasons  
Promulgated  
On 19 September 2017**

**Before**

**UPPER TRIBUNAL JUDGE CONWAY**

**Between**

**[M S]**

**~~(NO ANONYMITY DIRECTION MADE)~~**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Iqbal  
For the Respondent: Mr Singh

**DECISION AND REASONS**

1. The Appellant is a citizen of India born in 1967.
2. On 4 January 2016 the Respondent made a decision to refuse the Appellant's application for asylum and on human rights grounds.
3. He appealed against the decision on 18 February 2016.
4. The Respondent then produced a supplementary letter on 29 July 2016 which certified the asylum claim under section 94(1) of the Nationality, Immigration and Asylum Act 2002 as 'clearly unfounded'. The human

rights claim was similarly certified. The letter added that, as a consequence, he 'may not appeal while in the United Kingdom.'

5. Notwithstanding the certification the matter came before Judge of the First-tier Mitchell at Taylor House on 18 November 2016.
6. In a brief 'Decision and Reasons', having noted the history (above) he stated:-
  3. *... As a consequence the Appellant cannot bring an appeal against the refusal decision whilst in the United Kingdom. The Appellant is clearly still in the United Kingdom as he appeared before the Tribunal.*
  4. *I therefore have no jurisdiction to hear the appeal. This was not disputed by either representative. I dismiss the appeal for want of jurisdiction.'*
7. He sought permission to appeal which was granted on 2 June 2017.
8. At the error of law hearing (at which the Appellant was present) Mr Iqbal submitted that the judge erred in dismissing the appeal outright. It continues until he is removed. The appropriate course of action was to set aside the decision and relist it issuing directions for a skeleton argument addressing the interpretation of section 92(6) of the 2002 Act.
9. Mr Singh's submission was that the judge should not have dismissed the case outright. If the case was remitted to the First tier it can be heard if the Appellant leaves the country.

### **Consideration**

10. In considering this matter the position thus, in summary, is as follows. The Respondent refused the Appellant's application on 4 January 2016. It was not certified. He appealed. Before the appeal hearing on 18 November 2016 the Respondent certified the asylum and human rights claims under section 94(1) of the Nationality, Immigration and Asylum Act 2002 as 'clearly unfounded'.
11. Section 92 of the 2002 Act which is headed 'Place from which an appeal may be brought or continued' was substituted by section 17 of the Immigration Act 2014 from 20 October 2014.
12. Section 92(2) reads:-

*'In the case of an appeal under section 82(1)(a) (protection claim appeal), the appeal must be brought from outside the United Kingdom if*

- (a) *the claim to which the appeal relates has been certified under section 94(1) ... (claim clearly unfounded ...).*'

13. Section 92(3)(a) is in the same terms in respect of a human rights claim which has been certified as 'clearly unfounded'.

14. Section 92(6) reads:-

*'If, after an appeal under section 82(1)(a) or (b) [refusal of protection/human rights claim] has been brought from within the United Kingdom, the Secretary of State certifies the claim to which the appeal relates under section 94(1) ... the appeal must be continued from outside the United Kingdom.'*

15. There was no dispute from the representatives before the First-tier regarding the issue of certification in the appeal and that both sides agreed that the Appellant '*cannot bring an appeal against the refusal decision whilst in the United Kingdom*' as his claim had been certified.

16. Nothing stated by Mr Iqbal altered that situation.

17. The result is that the proceedings before the First-tier were a nullity. It might have been preferable had the judge issued a notice stating no valid in country appeal. However, I do not see it to be a material error of law to have dismissed the appeal for want of jurisdiction (which as indicated was accepted at the First-tier hearing by both representatives). The result of that decision is not to terminate the Appellant's appeal rights. That is because there was no appeal before the First-tier Tribunal as such an appeal is not exerciseable in country but '*must be continued from outside the United Kingdom*'. Should the Appellant leave the UK or be removed he can continue his appeal from outside the United Kingdom.

### **Notice of Decision**

The decision of the First-tier tribunal shows no material error of law and the decision stands.

No anonymity direction made

Signed

Date 18 September 2017

Upper Tribunal Judge Conway