



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/16333/2019 (P)

**THE IMMIGRATION ACTS**

Decided under Rule 34 without a hearing  
On 27 October 2020

Decision & Reasons Promulgated  
On 27 October 2020

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Mr Mohsin Altaf  
(ANONYMITY ORDER NOT MADE)

Appellant

And

The Secretary of State for the Home Department

Respondent

**DECISION**

1. By a "*Note and Directions No.2 (T)*" signed by me on 19 August 2020 and served on the parties on 17 September 2020, I informed the parties that it was my provisional view that:
  - (i) Judge of the First-tier Tribunal Buckwell's decision to dismiss the instant appeal stands to be set aside because he had no jurisdiction to consider the appeal substantively. This was because the appellant did not have a right of appeal against the decision dated 21 May 2019. I gave my reasons at paras 15-16 of the "*Note and Directions No.2 (T)*".
  - (ii) The appellant's appeal to the Upper Tribunal stands to be dismissed for want of jurisdiction. This is because he did not have a right of appeal against the decision dated 21 May 2019; and

- (iii) The decision on the instant appeal can and should be re-made without a hearing.
2. I then issued Directions to provide the parties with an opportunity to make submissions in response to my provisional view.
3. To date, neither party has made any submissions on the question whether the Upper Tribunal should proceed to consider without a hearing:
  - (i) whether Judge Buckwell's decision should be set aside for want of jurisdiction;
  - (ii) whether the Upper Tribunal should proceed to re-make the decision on the appellant's appeal; and
  - (iii) whether the Upper Tribunal should dismiss the appellant's appeal for want of jurisdiction.
4. In view of the fact that the outcome of the appeal to the Upper Tribunal turns upon whether or not the First-tier Tribunal had jurisdiction, that the parties have not made any submissions objecting to my provisional view that the First-tier Tribunal did not have jurisdiction and having regard to the overriding objective and the guidance of the Supreme Court at para 2 of its judgment in Osborn and others v Parole Board [2013] UKSC 61, I have concluded that it is appropriate, fair and just for me to exercise my discretion and proceed to decide the issues set out at para 3 above without a hearing.
5. For the reasons given in the "*Note and Directions No.2 (T)*", I am satisfied that Judge Buckwell did not have jurisdiction to decide the instant appeal. He therefore erred in considering the appeal substantively. He should have dismissed the appeal for want of jurisdiction and without considering the substantive merits of the case. I therefore set aside his decision to dismiss the appeal after substantive consideration.
6. I am also satisfied that the Upper Tribunal should proceed to re-make the decision on the appellant's appeal without a further hearing, for the reasons given at para 4 above.
7. I re-make the decision on the appellant's appeal by dismissing it for want of jurisdiction. My reasons are given at paras 15-16 of the "*Note and Directions No.2 (T)*". Paras 15-16 may be summarised as follows:
  - (i) The decision letter dated 21 May 2019 specifically stated that any submissions made by the appellant in relation to his human rights in his application of 6 February 2019 had not been considered in the decision letter.
  - (ii) Taking into account head-notes (1)-(3) and paras 82-86 of MY (refusal of human rights claim) Pakistan [2020] UKUT 00089 (IAC), it cannot be said that there was a decision to refuse a human rights claim.
  - (iii) Accordingly, there was no right of appeal against the decision dated 21 May 2019.

## Notice of Decision

8. The decision of the First-tier Tribunal involved the making of an error on a point of law such that the decision to dismiss the appeal after substantive consideration is set aside. The Upper Tribunal has proceeded to re-make the decision on the appeal. The appellant's appeal against the respondent decision of 21 May 2019 is dismissed for want of jurisdiction.

Signed  
Upper Tribunal Judge Gill

Date: 27 October 2020

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### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email