



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

**Case No: UI-2022-001921**  
**First-tier Tribunal No: EA/14074/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 01<sup>st</sup> March 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**  
**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**ABDUL FATAHI ISSAKA**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**AN ENTRY CLEARANCE OFFICER (LIVA/438)**

Respondent

**Representation:**

For the Appellant: Mr Musa Issaka, Sponsor

For the Respondent: Mr C Bates, a Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 14 February 2023**

**DECISION AND REASONS**

1. In a determination promulgated following a hearing at Birmingham CJC on 25 October 2022 the Upper Tribunal set aside the decision of a judge of the First-tier Tribunal which allowed the appellant's appeal against the decision to revoke the entry clearance issued to him on 26 November 2020, following his application for a family permit as the son of an Austrian national exercising treaty rights in the UK. Directions were given for the matter to return to the Upper Tribunal for a Resume Hearing to enable the Tribunal to substitute a decision to either allow or dismiss the appeal.
2. There have been a number of appeals relating to this family unit and it is fair to say there has been a great deal of confusion. At the start of today's hearing Mr Bates advised the Tribunal that another issue had arisen.

3. Using the entry clearance granted to him the appellant entered the UK via Heathrow airport on 8 December 2020. The decision to revoke the entry clearance was made on the 10 December 2020 on the basis it is said the documents provided in support of the original application are false.
4. Regulation 31 of the Immigration (European Economic Area) Regulations 2016 ('the 2016 Regulations') provides that where a person's admission to the United Kingdom is revoked, that person is to be treated as a person to whom admission to the United Kingdom has been refused and regulation 30 applies accordingly.
5. Rights of appeal are to be found in regulation 36 of the 2016 Regulations. Regulation 37 (1) provides that person may not appeal under regulation 36 whilst in the United Kingdom against an EEA decision to refuse to admit that person to the United Kingdom or to revoke that person's admission to the United Kingdom.
6. Reference was made by Mr Bates to the decision of the Upper Tribunal in Isufaj (PTA decisions/reasons; EEA reg. 37 appeals) [2019] UKUT 283, the second headnote of which reads:

Although regulation 37(1) of the Immigration (European Economic Area) Regulations 2016 provides that a person may not appeal under regulation 36 whilst he or she is in the United Kingdom, where the decision in question falls within regulation 37(1)(a) to (g), once the appeal is instituted by a person who is then outside the United Kingdom, there is no statutory prohibition on the appeal continuing if the person concerned thereafter is physically present in the United Kingdom. It will, however, be for the Secretary of State to decide whether to give that person temporary admission for the purpose of attending an appeal hearing, since regulation 41 does not apply to such cases.

7. In Isufaj the appellant had issued an appeal against a decision whilst out of the United Kingdom but had entered the United Kingdom by the date of the appeal hearing. The Tribunal at [22] found "*We see no basis for taking issue with Mr Deller's submissions on this matter. Provided that the appeal is instituted when the appellant is outside the United Kingdom, his subsequent presence in the United Kingdom does not cause the appeal to lapse or otherwise become ineffective*".
8. That must be right, as the Regulations provide a person may not appeal under regulation 36 whilst they are in United Kingdom but that does not prevent an appeal instituted whilst the person is out of United Kingdom from continuing thereafter even if that person enters the United Kingdom.
9. That decision can be distinguished from the current appeal as in this appeal the appellant had entered the United Kingdom prior to the date on which he issued the appeal against the revocation decision. The appellant was therefore not outside the United Kingdom at the date he appealed. As he has no in country right of appeal against the decision there is no jurisdiction to consider the appeal until the appellant is outside the United Kingdom.
10. We accept the submission that the effect of the decision in Virk [2013] EWCA Civ 652 is that statutory jurisdiction cannot be conferred by waiver or agreement, or by the failure of the parties or the tribunal to be alive to the point. It is acceptable a point of jurisdiction can be raised at this stage now the chronology of events is, for the first time clear, even if not previously raised before the First-tier Tribunal.
11. We find in light of the facts and proper application of the law that we have no jurisdiction to consider this matter further.
12. As the appellant is already in the United Kingdom and neither he nor his father want him to have to leave the country to pursue an out of country appeal, the appellant and/or Sponsor may wish to consider whether it is appropriate to take

advice to ascertain whether he can make an application for leave under the Immigration Rules or pursuant to Article 8 ECHR. We appreciate the Sponsor has limited resources, but he might be able to obtain advice from the Citizens Advice Bureau or a specialist solicitor who may be able to offer an initial free consultation.

**Notice of Decision**

13. The Tribunal has no jurisdiction to consider this matter further at this time.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**14 February 2023**