Upper Tribunal
(Immigration and Asylum Chamber)

Singh (No immigration decision- jurisdiction) [2013] UKUT 00440 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 26 June 2013	.....

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

DIMPLE SINGH

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance and not represented
For the Respondent: Ms H. Horsley, Home Office Presenting Officer

(i) An appeal under section 82 of the Nationality, Immigration and Asylum Act 2002 requires there to be an immigration decision, as there defined. Where no immigration decision has been made, the First-tier Tribunal has no jurisdiction to hear the appeal.

(ii) Judges considering an appeal (or applications for permission to appeal) should ensure that a copy of the notice of the immigration decision under appeal exists and is produced.

DETERMINATION AND REASONS

1. The appellant is a citizen of India, born on 16 January 1986. She arrived in the UK on 11 November 2009 with leave as a spouse. She made an in-time application on 14 November 2009 for indefinite leave to remain as a spouse.

2. She purported to appeal to the First-tier Tribunal against what was considered by the First-tier Tribunal to be an immigration decision refusing her application. The First-tier judge described the appeal as an appeal against a decision to refuse to vary leave to remain. She dismissed the appeal on the basis that she was not satisfied that the appellant had established that she is married to a person settled in the UK. This was an issue raised in the refusal letter.

3. Neither the appellant nor her spouse, whom it is asserted by the appellant is a British citizen, attended the hearing. There was a psychiatric report before the First-tier judge which said that the appellant was not fit to attend a hearing, although it is a report that is tailored to criminal proceedings rather than immigration proceedings before a Tribunal.

4. Permission to appeal was granted by a designated judge of the First-tier Tribunal on the basis of the judge's consideration of Article 8 ECHR.

5. For the hearing before the Upper Tribunal the appellant submitted a typed response to the grant of permission. It asserts that she is unfit to attend, citing the psychiatric report that was before the First-tier Tribunal and asking that the hearing be adjourned for a minimum of six months. That period was said to be necessary not only in relation to the appellant's mental health but also because it was said that her husband is appealing against various convictions for identity and documentary offences. Evidence of those convictions was put before the First-tier Tribunal, another matter of complaint raised in relation to the First-tier judge’s decision, given that the appellant did not attend and was not served with that evidence.

6. This is all part of the background. However, the outcome of these proceedings does not depend on any of those matters, nor does it depend on whether the appellant is/was fit to attend any hearing.

7. On the Tribunal file there is no notice of immigration decision. Amongst the file papers it is clear that the issue of the validity of the appeal was flagged up before listing before the First-tier Tribunal. A First-tier judge gave directions to the respondent for service of a notice of immigration

decision. There is a memo from the UKBA with a fax date of 27 November 2012 briefly stating the appellant's name and Home Office reference number and stating that there is no immigration decision evident. A further internal administrative document indicates that a (presumably) duty judge indicated that the question of the validity of the appeal could be resolved at the hearing.

8. Before me Ms Horsley was not able to locate any notice of immigration decision on the respondent's file. Enquiries made of the Home Office computer after a short adjournment revealed that there was in fact no immigration decision. It seems that none was ever issued. Ms Horsley agreed that the result is that there is no valid appeal before the Upper Tribunal.

9. In the circumstances, neither was there a valid appeal before the First-tier Tribunal. Although I was not referred to it, I have considered the decision of the Court of Appeal in Rashid Anwar [2010] EWCA Civ 1275. However, that case was concerned with quite different issues, involving the question of whether there was an in-country right of appeal against an immigration decision and whether a notice of immigration decision was in fact an appealable immigration decision within the meaning of section 82(2) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). In passing it is worth pointing out that at [31] Sedley LJ said that the rejection of a human rights claim is not of itself an appealable immigration decision, although it may lead to such a decision in due course. Likewise here, the rejection of the application for further leave to remain in the refusal letter is not an immigration decision.

10. The decision of the First-tier Tribunal in this case was erroneous in purporting to determine an appeal when there was no jurisdiction to do so. Accordingly, the decision of the First-tier Tribunal must be set aside. I re-make the decision by dismissing the appeal for want of jurisdiction.

11. This appeal has found its way to the Upper Tribunal in circumstances where there was never any valid appeal in the first place. That has been wasteful of time and resources, not only the administrative resources of the Home Office but of the Tribunal, and in terms of judicial resources. This case illustrates how important it is that immigration judges ensure that there is an immigration decision in existence when considering an appeal or an application for permission to appeal. The reasons for refusal letter is not the (notice of) immigration decision and does not generate the right of appeal. A notice of immigration decision must comply with the provisions of The Immigration (Notices) Regulations 2003. Under section 82(1) of the 2002 Act it is the immigration decision (contained within the notice of decision) that generates the right of appeal to the Tribunal.

12. Where a judge considering an appeal finds that there is no notice of decision on the Tribunal file, at the hearing the parties should be asked to check to see if either has a copy of the immigration decision. Failing

that, the Home Office representative can make appropriate enquiries which can be done on the day of the hearing without any further adjournment of the matter to another day. Where there is no Home Office representative, there is no reason why Tribunal administrative staff cannot contact the Home Office directly for enquiries to be made. If there is no immigration decision the appeal will usually be able to be disposed of immediately by a decision that the Tribunal has no jurisdiction to hear the appeal.

13. When considering an application for permission to appeal, a grant of permission can be expressed to be predicated on the premise that there is in existence a notice of immigration decision. With the grant of permission a direction can be given for the same to be filed and served within a short specified time.

Decision

14. The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision of the First-tier Tribunal is set aside and the decision re-made dismissing the appeal for want of jurisdiction.

Upper Tribunal Judge Kopieczek

26/06/13