

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

R (on the application of Hossain) v Secretary of State for the
Home Department IJR [2015] UKUT 0268 (IAC)

Field House
London

28 April 2015

BEFORE

UPPER TRIBUNAL JUDGE COKER

**In the matter of an application for Judicial Review
The Queen on the application of**

MD MOKBUL HOSSAIN

Applicant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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No appearance by or on behalf of the applicant.

Mr R Harland, counsel, instructed by the Government Legal
Department appeared on behalf of the Respondent.

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APPROVED EX TEMPORE JUDGMENT

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JUDGE COKER: This is the hearing of a judicial review of a
decision dated 14 December 2013 to remove the applicant from
the UK pursuant to Section 10 of the Immigration and Asylum
Act 1999.

2. There was a little concern as to whether the applicant had
received notice of today's hearing. It seems from the court
file that he may have been sent notice to [Address A], London.

The respondent wrote to him on 24 April 2015 at [Address B], London referring to the substantive hearing of this case today. Either way, whether he is at the [Address A] address or the [Address B] address, he will have received notice of today's hearing.

3. Proceedings were initially issued seeking permission to judicially review the removal directions dated 19 December 2013. Those grounds were subsequently amended with consent to challenge the 14 December 2013 decision and not the removal directions which had in any event been cancelled. Permission was granted on 14 May 2014 and comment made that the respondent had not filed an acknowledgement of service. The Secretary of State had in fact filed the acknowledgement of service but this had not reached the judge who granted permission, although it has now come to light.
4. The grounds are that at the date of the decision the applicant had not been provided with particulars of the evidence justifying his removal and there had been a failure to exercise discretion whether to curtail leave rather than make a Section 10 removal decision.
5. The applicant has not filed any further documents despite a direction that he file a skeleton argument and trial bundle at least 21 days prior to the date of hearing. No application to extend time has been made and no explanation for the failure to comply with directions has been given. The applicant of course is not here today.
6. As regards ground 1, the applicant has an out of country right of appeal. The gist of the reason for the decision to remove him was communicated to the applicant. There is no precedent fact that would require a decision prior to the decision to

remove. The respondent had adequate evidence before her to make the decision, namely an interview with the applicant's employer confirming that he was employed. The appeal structure set out by Parliament enables appeals to be brought out of country where there factual matters in dispute: see for example, Shabaz Ali [2014] EWHC 3967 (Admin) and Jan [2014] UKUT 00265 (IAC).

7. As far as ground 2 is concerned, although there is a discretion not only did the respondent exercise that discretion concluding that it was proportionate to utilise the Section 10 process, but there is no requirement for her to specify reasons why she has chosen one procedure over another: see Jan.

8. For these reasons judicial review of the decision of 14 December 2013 is refused.

9. So far as costs are concerned, I have received a schedule of the respondent's costs and make an order to that effect, namely £6,098.40 to be paid by the applicant to the respondent.

10. Although the applicant is not here to request permission to appeal to the Court of Appeal I refuse permission to appeal, there being no arguable point of law capable of affecting the outcome of the application.

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