



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

Appeal Number: IA/01625/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28th November 2015**

**Decision & Reasons
Promulgated
On 9th February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

**MUZAFFER SIMSEK
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No one

For the Respondent: Miss Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Turkey, born on 1st January 1971. He appealed against the decision of the Respondent dated 16th August 2013 refusing him indefinite leave to remain in the United Kingdom on human rights grounds. His appeal was heard by Judge of the First-tier Tribunal Malins on 10th September 2014 and dismissed in a determination promulgated on 24th September 2014.
2. An application for permission to appeal was made on behalf of the Appellant. Permission to appeal was granted by Judge of the First-tier Tribunal V A Osborne on 14th November 2014. Two of the grounds of application were rejected. The third ground was that the judge applied an inappropriate test when assessing the appellant's family life with his brothers in the United Kingdom. This could not be covered by Appendix FM and relying on the case of **Ghising (Family life - adults - Gurkha**

policy) Nepal [2012] UKUT 160 (IAC) it was argued that the correct test was to consider further elements of dependency involving more than normal emotional ties as opposed to imposing a test of exceptional dependency as stated at paragraph 11 of the determination. This was stated to be the only arguable error of law and it is on this ground that permission to appeal has been granted.

3. The error of law hearing was listed to take place on 11th December 2014. At that hearing an issue arose as to whether the appellant in this claim has an in country right of appeal. The following directions were given orally at the hearing.

“The Tribunal must establish whether the certificate contained in the notice of decision in paragraph 26 of the reasons for refusal letter has been withdrawn. Counsel’s brief was endorsed to the effect that the Presenting Officer conceded that the Appellant had an in country right of appeal however there is nothing on the Home Office’s file or the Presenting Officer’s minute to this effect.

The Tribunal will hear argument and consider any evidence on this issue which the parties wish to submit. Any such evidence should be filed and served no later than fourteen days before the hearing. It may be that the issue could be resolved between the parties. If it transpires a concession was made regarding the right of appeal, the representatives should be prepared to argue whether such a concession could be made and its effect.”

4. No evidence relating to the concession was submitted by the Appellant. On 16th December 2014 the Respondent forwarded a letter to the Tribunal referring to the adjourned hearing on 11th December 2014. The hearing on that date was before Mrs Justice Carr and Judge Froom. The letter refers to the Tribunal raising with the parties that there is no in country right of appeal before it because the Appellant’s claim has been certified under Section 94(2) of the Nationality, Immigration and Asylum Act 2002. The letter states that it appears that neither Judge Malins’ Record of Proceedings nor the Home Office file indicate that there was any concession made to withdraw the certification or accept that the Appellant had an in country right of appeal. The Appellant’s representative has accepted that following a subject access request the documentation does not show that the certificate has been withdrawn but the representative provided a handwritten note from the previous Counsel, Mr Solomon, which records - “PO concedes the app has an in country right of appeal”. Irrespective of that note the Presenting Officer was not in a position to grant a right of appeal. The letter states that the Presenting Officer at the First-tier hearing stated that she did not make any concession in this appeal.
5. The notice of immigration decision dated 6th December 2013 which was before the First-tier Tribunal states

“You are entitled to appeal this decision under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 after removal. You cannot appeal while you are in the United Kingdom because a certificate has been issued under Section 94 of the 2002 Act (as amended). A Notice of Appeal is enclosed which explains what to do and an Immigration and Asylum Chamber leaflet which explains how to get help.”

The Hearing

6. There was no appearance on behalf of the Appellant or by the Appellant at this hearing.
7. The Presenting Officer submitted that the Respondent has made no concession relating to the certification of this claim. She submitted that in any case there is no statutory basis for the certificate to be withdrawn. She submitted that when the case was heard before the First-tier Tribunal and dismissed there was no material error of law. She submitted that the Immigration Act 2014 was in place and the determination of the First-tier Tribunal makes it clear that the Appellant has never had any leave to be in the United Kingdom. She submitted that his siblings were granted leave to remain in the United Kingdom when the Appellant was in the United Kingdom but it is clear from the determination and from the file that the Appellant, since coming to the United Kingdom in 1999, has been working for his own family. His siblings are on benefits and he has family members in Turkey.
8. I was referred to the case of **BW Afghanistan [2014] UKUT 00568 (IAC)** and I was referred to the said letter of 16th December 2014 from the Respondent to the Tribunal.
9. My clerk informed me that she had tried to contact the appellant and his representative and when she telephoned the Appellant’s representative’s number she was told that the number was temporarily unavailable. There is also a telephone number on file for Mr Solomon, the previous Counsel in this case and the clerk telephoned him and was told that Mr Solomon was on leave. The clerk who answered the phone could find no notes about this case or about this hearing.
10. I therefore decided to deal with this error of law hearing on the papers available and the submissions of Miss Isherwood.
11. The Presenting Officer submitted that there is no evidence that the Respondent made a concession relating to the certification of this transaction. She submitted therefore that there is no in country right of appeal and the appeal should be dismissed.
12. She then submitted that a concession such as this cannot be made by the Home Office so in this case even if a concession had been made at the First-tier hearing, in law the Respondent is not able to withdraw the

certificate. It therefore follows that the Appellant has no in country right of appeal. This issue could have been resolved between the parties and I was asked to find that the First-tier Tribunal had no jurisdiction and should not have determined the case.

Determination

13. I have considered the notice of immigration decision of the Respondent dated 4th December 2013. It is clear from this that this Appellant has no in country right of appeal. This is because a certificate was issued under Section 94 of the 2002 Act, as amended.
14. Even if there had been a concession by the Presenting Officer at the First-tier hearing the Presenting Officer had no authority to make this concession. There is no statutory basis for the certificate being withdrawn. The judge at the First-tier hearing should not have heard the appeal.

Notice of Decision

15. The appellant has no in country right of appeal in this claim. Judge of the First-tier Tribunal Malins should not have heard the case on 10th September 2014.
16. The Respondent's decision of 16th August 2013 refusing to grant the Appellant indefinite leave to remain in the United Kingdom on human rights grounds must stand.

No anonymity direction is made.

Signed

Date 06/02/2015

Deputy Upper Tribunal Judge Murray

TO THE RESPONDENT **FEE AWARD**

In the circumstances of this claim there will be no fee award.

Signed

Date 06/02/2015

Deputy Upper Tribunal Judge Murray

