



IAC-FH-CK-V1

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

Appeal Number: RP/00018/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision &  
Promulgated**

**Reasons**

**On 22 January 2016**

**On 22 March 2016**

**Before**

**MR C M G OCKELTON, VICE PRESIDENT  
UPPER TRIBUNAL JUDGE O'CONNOR**

**Between**

**[S A]**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Yeo, instructed by Kesar & Co Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of Somalia born 20 May 1988. He entered the United Kingdom on 17 October 2002 at the age of 14 and has been continuously resident here since. He was recognised as a refugee on 22 January 2003.
2. On 6 January 2009 the appellant was convicted of three counts of supplying a Class A controlled drug and sentenced to four years and nine months' imprisonment. On 4 September 2012 he was once again convicted of supplying a Class A controlled drug and on this occasion was sentenced to five years and seven months' imprisonment.

3. On 16 June 2014 the Secretary of State sent notice to the appellant of her intention to 'cease' his refugee status. On 9 April 2015 the Secretary of State made a decision headed: "*Decision to deport and to refuse a protection claim and/or human rights claim*", in relation to which the appellant brought an appeal before the First-tier Tribunal. It is this decision which forms the focus of the appeal before us.
4. In a lengthy decision promulgated on 20 October 2015 First-tier Tribunal judge Davey dismissed the appellant's appeal on all grounds. Permission to appeal to the Upper Tribunal was subsequently granted on 27 November 2015 by FTTJ Andrew.
5. In the hearing before us Mr Yeo began by asserting that the recently amended s.82 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") is not exhaustive in its description of the grounds an appellant can deploy before the First-tier Tribunal and that, even subsequent to the amendments to this section introduced by the Immigration Act 2014, the Tribunal retained jurisdiction to allow an appeal on the basis that the Secretary of State's decision was not in accordance with the law.
6. During the course of these submissions it became apparent that the Secretary of State's decision of 9 April 2015 suffered from a hereto unforeseen fundamental inadequacy that not only rendered it unlawful, but also had the same effect on the proceedings before the First-tier Tribunal.
7. The decision of 9 April 2015 states on its faces that it is provided "*in compliance with the Immigration (Notices) Regulations 2003*" ("Notices Regulations"). This though is clearly not the case.
8. Its text conveys the following conclusions:
  - (i) a certificate is issued by the Secretary of State pursuant to Section 72(9) of the Nationality, Immigration and Asylum Act 2002 - the appellant having committed a particularly serious crime and not able to rebut the presumption that his continued presence in the United Kingdom would constitute a danger to the community;
  - (ii) a decision has been made to cease the appellant's refugee status;
  - (iii) the appellant's deportation would not lead to a breach of Articles 2, 3 or 8 of the ECHR.
9. A significant feature of the decision is found on its page 20 of 23, which reads:

**"Appeal**

You have the right to appeal against the decision to refuse your human rights claim under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 from within the UK.

Any appeal must be made on one or more of the following grounds:

- that your removal from the UK would breach the UK's obligations under the Refugee Convention;
- that your removal from the UK would breach the UK's obligations in relation to persons eligible for a grant of humanitarian protection;
- that your removal from the UK would be unlawful under Section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention).

You must not appeal on grounds which do not apply to you. You must also explain the reasons that you are appealing against the decision and provide any supporting evidence that is available to you in order to substantiate your grounds of appeal."

10. After the amendments to s.82 of the 2002 Act brought about by the Immigration Act 2014, the decisions against which applicants have a right of appeal to the First-tier Tribunal are identified exhaustively in the following terms:

**"82. Right of appeal to the Tribunal**

- (1) A person ('P') may appeal to the Tribunal where -
  - (a) the Secretary of State has decided to refuse a protection claim made by P,
  - (b) the Secretary of State has decided to refuse a human rights claim made by P, or
  - (c) the Secretary of State has decided to revoke P's protection status.
- (2) For the purposes of this Part -
  - (a) a 'protection claim' is a claim made by a person ('P') that removal of P from the United Kingdom -
    - (i) would breach the United Kingdom's obligations under the Refugee Convention, or
    - (ii) would breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection;
  - (b) P's protection claim is refused if the Secretary of State makes one or more of the following decisions -
    - (i) that removal of P from the United Kingdom would not breach the United Kingdom's obligations under the Refugee Convention;
    - (ii) that removal of P from the United Kingdom would not breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection;
  - (c) a person has 'protection status' if the person has been granted leave to enter or remain in the United Kingdom as a refugee or as a person eligible for a grant of humanitarian protection;

- (d) 'humanitarian protection' is to be construed in accordance with the Immigration Rules;
- (e) 'refugee' has the same meaning as in the Refugee Convention..."

11. Section 84 of the 2002 Act (as amended by the Immigration Act 2014) sets out the grounds which an applicant is entitled to deploy in any appeal against a decision identified in section 82(1) of that Act:

**"84. Grounds of appeal**

- (1) An appeal under Section 82(1)(a) (refusal of protection claim) must be brought on one or more of the following grounds -
  - (a) that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention;
  - (b) that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection;
  - (c) that removal of the appellant from the United Kingdom would be unlawful under Section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention).
- (2) An appeal under Section 82(1)(b) (refusal of human rights claim) must be brought on the ground that the decision is unlawful under Section 6 of the Human Rights Act 1998.
- (3) An appeal under Section 82(1)(c) (revocation of protection status) must be brought on one or more of the following grounds -
  - (a) that the decision to revoke the appellant's protection status breaches the United Kingdom's obligations under the Refugee Convention;
  - (b) that the decision to revoke the appellant's protection status breaches the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection."

12. Pursuant to the Notices Regulations the Secretary of State must give written notice to a person of any immigration decision or EEA decision taken in respect of him or her which is appealable under s.82(1) of the 2002 Act (regulation 4 of the Notices Regulations). Regulation 5 thereof identifies in mandatory terms that the notice given under regulation 4 shall also include, or be accompanied by, a statement which advises the person of -

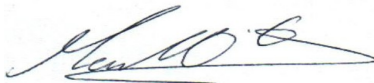
- "(3) (a) his right of appeal and the statutory provision on which his right of appeal is based;
- (b) whether or not such an appeal may be brought while in the United Kingdom;
- (c) the grounds on which such an appeal may be brought; and

- (d) the facilities available for advice and assistance in connection with such an appeal.”
13. It is apparent, and was accepted by Mr Walker, that the decision of 9 April 2015 fails to display the mandatory features required of it by regulation 5. Although it is headed “*a decision to refuse a protection claim and/or human rights claim*” it is clearly not former because the appellant already had protection status (granted as long ago as 2003) and has not, for obvious reasons, made any subsequent claim in this regard. Neither is there anything before us to indicate that the appellant made a human rights claim prior to 9 April 2015.
  14. The decision of 9 April 2015 is, without doubt, a decision to revoke the appellant’s protection status. As a consequence the appellant had a right of appeal to the First-tier Tribunal by operation of s. 82(1)(c) of the 2002 Act.
  15. In accordance with regulation 5 of the Notices Regulations, the decision of 9 April 2015 was required to include within it a statement which, *inter alia*, advised the appellant of: (i) the right of appeal to the First-tier Tribunal, (ii) the legislative provision upon which such right is derived and (iii) the grounds of appeal available to the appellant. It discloses none of these features. It may be that this was as a consequence of confusion arising in the decision-makers mind brought about by the recent amendment to the appeal provisions, and grounds, in sections 82 and 84 of the 2002 Act.
  16. We observe in particular that at paragraph 32 of the Secretary of State’s decision the appellant is notified that he does not have a right of appeal against the decision to cease his refugee status. Later in the decision letter he is incorrectly notified that he has a right of appeal against the decision refusing a human rights claim - there having been no such claim. These failings are compounded further by the notification of the grounds identified in the decision that are said to be available for the appellant to rely upon before the First-tier Tribunal; such notification failing to include those found in s.84(3) of the 2002 Act, and mistakenly including those grounds relevant only to an appeal against a decision to refuse a protection claim.
  17. For these, and indeed other, reasons the decision letter of 9 April fails to comply with the requirements of the Notices Regulations. It is therefore unlawful. There was therefore no valid decision against which the appellant could have brought an appeal to the First-tier Tribunal. Mr Walker accepted this to be so, acknowledging that the appellant could not be taken to have waived the requirements of the Notices Regulations given that he had no knowledge that such requirements had not been complied with.
  18. Mr Yeo sought, and absent objection from Mr Walker we granted, permission for the appellant to amend his grounds of appeal to the Upper

Tribunal to include the submission that the First-tier Tribunal's decision was made without jurisdiction.

19. For the reasons given above we acceded to this ground. The appellant has been the subject of a decision which is 'appealable', and was therefore entitled to a notice complying with the requirements of Notices Regulations. He has not, as yet, received such a notice and has not waived the need for the Secretary of State to comply with the requirements of the Regulations, despite lodging an appeal to the First-tier Tribunal.
20. In such circumstances the First-tier Tribunal had no jurisdiction to determine the appeal brought before it and its decision is of no effect. There is nothing left for the Tribunal at either level to determine.

Signed:

A handwritten signature in black ink, appearing to read 'M. O'Connor', written over a faint horizontal line.

Upper Tribunal Judge O'Connor