

**Upper Tribunal
(Immigration and Asylum
Chamber)**
IA/31718/2014



Appeal Numbers:

IA/32768/2014

THE IMMIGRATION ACTS

Heard at Field House

On 13th April 2015

**Decision and Reasons
Promulgated**

On 16th April 2015

Before

**Deputy Upper Tribunal Judge Rimington
(Immigration and Asylum Chamber)**

Between

**Abayomi Oluwaseun Peters
Elena-Viorica Raileanu
(No Anonymity Direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Haywood, instructed by Rodman Pearce

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION and REASONS

The Appellant

1. The appellants made applications under the Immigration (European Economic Area) Regulations 2006 which were refused. Both appellants were given a right of appeal under the EEA Regulations and by virtue of Regulation 26 and Section 82 of the Nationality Immigration and Asylum Act 2002. The appellants' remedies were by way of appeal despite the First Tier Tribunal Judge Pacey finding that as judicial review proceedings

were lodged the First Tier Tribunal had no jurisdiction. Judicial review is a remedy of discretion and cannot negate a statutory right of appeal.

2. It was conceded by the respondent in a response under Rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 that the decision of First-tier Tribunal Judge Pacey contained an error of law. The Tribunal had jurisdiction. Further to Section 104 of the Nationality Immigration and Asylum Act 2002, an appeal under Section 82(1) is pending until it is finally determined, withdrawn or abandoned or when it lapses under Section 99. None of these circumstances apply.
3. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement. In the circumstances the matter should be considered for an expedited hearing.

Signed

Date 13th April 2015

Deputy Judge of the Upper Tribunal Rimington