



IAC-FH-AR-V1

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

Appeal Number: IA/02931/2015

THE IMMIGRATION ACTS

Heard at Field House

On 13 April 2016

**Decision &
Promulgated
On 25 April 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**AKRAM PASHA SHAIKH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought by the Secretary of State in relation to a decision promulgated on 12 October 2015 by First-tier Tribunal Judge Clarke. That decision arose out of an appeal brought by the then appellant, Akram Pasha Shaikh, a national of India, concerning leave to be in the United

Kingdom as a Tier 4 (General) Student. The First-tier Tribunal Judge carefully considered the particular circumstances of the case (which I need not relate for the purposes of this appeal) and concluded at paragraph 19:

“I find that what should have happened in the Appellant's case is that the Respondent [ie the Home Secretary], in accordance with her own policy, should have issued the Appellant with a 60 day letter. There is no evidence before me that a 60 day letter was sent to the appellant once his CAS had been cancelled. It follows that I find that the impugned decision is not in accordance with the law. I allow the appeal to the limited extent that the case should be remitted back to the Respondent for a 60 day letter to be issued in accordance with my findings.”

2. The single error of law pursued by the Secretary of State, and in relation to which permission was granted, was that Home Office records show that the then appellant departed the United Kingdom voluntarily on 28 July 2015 (I take no point on the fact that the grounds say 23 July) and the Tribunal was unaware of this at the time of the hearing.
3. Reliance was placed upon sub-section 104(4) of the Nationality, Immigration and Asylum Act 2002. Sub-section 104(4) is no longer reproduced in the standard text, *Phelan & Gillespie, Immigration Law Handbook* (9th edition, 2015) because it is no longer in force. It had read as follows:

“An appeal under section 82(1) brought by a person while he is in the United Kingdom shall be treated as abandoned if the appellant leaves the United Kingdom.”

The annotation in the rubric at the foot of this section states that the words in sub-section (4) were omitted by virtue of Schedule 9 of the Immigration Act 2014 with effect from 20 October 2014. As this provision was no longer in force at the time of the decision of the First-tier Tribunal, it cannot be relied on in this appeal.

4. Under the Tribunal Procedure Rules 2014, rule 16(1) says that a party must notify the First-tier Tribunal if they are aware that the appellant has left the United Kingdom. The Secretary of State had constructive notice of the appellant's departure from the United Kingdom. I have been shown a series of screen shots relating to the appellant's immigration history, the most salient one of which is dated 28 July 2015 and indicates that the appellant left the country on flight BA 0277 from London Heathrow to Hyderabad on that date.
5. It is regrettable but I think entirely understandable that the Secretary of State was not able to communicate that information to the First-tier Tribunal by the date of the hearing on 31 July 2015.

6. Sub-section 104(4A) was introduced by the Immigration, Asylum and Nationality Act 2006. It states “an appeal under Section 82(1) brought by a person while he is in the United Kingdom shall be treated as abandoned if the appellant is granted leave to enter or remain in the United Kingdom”. This does not apply because the then appellant was never granted leave to enter or to remain.
7. Having considered these various statutory provisions, Mr Bramble conceded that notwithstanding the grant of permission, this appeal cannot succeed and therefore the requirement that a 60 day letter be served has to remain. Whether this has any practical effect in the case of an individual who has voluntarily left the country already is doubtful. However, there is no error of law apparent on the face of the First-tier Tribunal decision and in the circumstances this appeal is dismissed.

Notice of Decision

Appeal dismissed

No anonymity direction is made.

Signed *Mark Hill*

Date

22 April 2016

Deputy Upper Tribunal Judge Hill QC

Approval for Promulgation

Name of Deputy Judge issuing approval:	Mr M Hill QC
Appellant's Name:	Akram Pasha Shaikh
Case Number:	IA/02931/2015

Oral decision (please indicate)

I approve the attached Decision and Reasons for promulgation

Name: Mark Hill QC

Date: 22 April 2016