IN THE UPPER TRIBUNAL

(Immigration and Asylum Chamber)

R (on the application of Khan) v Secretary of State for the Home Department (right of appeal – alternative remedy) IJR [2015] UKUT 00353 (IAC)

Heard at Field House

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

THE QUEEN

on the application of

SAQIB ZIA KHAN

Applicant

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Applicant: Mr R. Pennington-Benton and Ms J. Lowis, instructed by Farani Javid Taylor solicitors

For the Respondent: Mr Z Malik, instructed by the Government Legal Department

Although each case must be determined on its own facts, in cases where a person seeks to dispute the Secretary of State's assertions as to the availability of an appeal to the First-tier Tribunal, the appropriate course is for such person to lodge a notice of appeal with the First-tier Tribunal requesting that it determine this issue. Given the existence of this suitable alternative remedy, it will only be in exceptional circumstances that the Upper Tribunal will exercise its discretion and grant relief to a person who seeks to raise this same issue before it in judicial review proceedings brought against the Secretary of State.

JUDGMENT

handed down on 15 June 2015

Judge O'Connor:

Introduction

1.

This is an application for judicial review of a decision made by the Secretary of State for the Home Department on 24 May 2013 – the application having been lodged on 22 August 2013 and permission having been granted after a hearing, by order of Upper Tribunal Judge Freeman dated 16 August 2014.

Background

2.
The chronology is as follows: The Applicant is a citizen of Pakistan born in 1983. He first entered the United Kingdom as a student on 12 July 2007 and his leave was subsequently extended so as to be last conferred until 30 July 2012.

3.
On 4 April 2012 the Applicant made an application for leave to remain as a Tier 1 (Post Study Work) Migrant. This application was accompanied by details of a debit card bearing the Applicant's name, which was valid until 30 April 2012. As of the date of making this application the Applicant was not in possession of his degree certificate, production of which was required in order for the Applicant to meet the requirements of the Immigration Rules. As a consequence, the covering letter to the aforementioned application made a request that:

"[t]he Home Office does not take a decision upon the Applicant's application until he has received his degree certificate and is able to forward it on to the UK Border Agency.

It is by no fault of our client that he is unable to provide the relevant certificate at this date and therefore it is kindly requested that the Home Office uses their discretion whilst considering this application."

4.
On the 2 May 2012 the Applicant's solicitor wrote to the Respondent stating:

"Our client has been informed by his bank that as his Visa Debit card has expired and that (sic) any attempts to take payment from the card details enclosed within the application will be declined

We would be grateful if you could please contact us as soon as possible in order to allow us to provide you with his new card details in a secure manner."

5.
On 27 July 2012, and prior to the Respondent seeking to process payment for the application made on 4 April 2012 or the Applicant having provided new payment details to the Respondent, the Applicant sought to vary his grounds of application – using Form FLR(O). This application was not accompanied by the specified fee of £842.

6.
In response the Secretary of State wrote to the Applicant on 21 September 2012 in the following terms:

"The specified fee has not been paid in connection with your attempted application which you made by post on 27 July 2012. We do not consider that an exception to the requirement to pay the fee applies in this case, and therefore your application is invalid and we are returning your documents."

7.

On 21 November 2012 the Applicant made a further application for leave to remain on Form FLR(O), this time accompanied by the specified fee.

8.
This application was refused by the Respondent in the decision under challenge of 24 May 2013 in which, having first refused to grant the Applicant leave to remain, the Respondent stated:

"An application was made on your behalf on 21 November 2012. However, your leave to remain expired on 30 July 2012. You therefore did not have leave to remain at the time of your application.

Your application for leave to remain in the United Kingdom has been refused and you no longer have any known basis of stay here. There is no right of appeal against this refusal."

The underlying claim

9.
By this claim the Applicant does not seek to bring a challenge to the substance of the Respondent's decision of the 24 May 2013 refusing him leave to remain, but rather it is asserted that he is entitled to bring an appeal before the First-tier Tribunal against such decision.

Availability of an alternative remedy

10.
The possibility of the Applicant having an alternative remedy available to him was raised for the first time by myself at the hearing of 9 February 2015 i.e. after permission had been granted. Given that neither party had previously paid any thought to this issue, the hearing of 9 February was adjourned so to enable them to do so and, if thought necessary, to amend their respective cases. As a consequence, both parties put in lengthy supplementary skeleton arguments.

11.
The jurisdiction of the First-tier Tribunal is dictated by statute. Section 82(1) of the Nationality, Immigration and Asylum Act 2002 provided (prior to its amendment by the Immigration Act 2014) that where an immigration decision is made in respect of a person, such person may appeal to the First-tier Tribunal – subject to defined exceptions which are of no relevance in the instant matter.

12.
By section 82(2)(d) of the 2002 Act an immigration decision includes a decision refusing to vary a person's leave to enter or remain in the United Kingdom, if as a result of that refusal such person has no leave to enter or remain. Consequently, when a person applies for leave to remain during the currency of existing leave but receives a negative decision after such leave expires (excluding the effect of section 3C of the Immigration Act 1971) that person has a right of appeal to the First-tier Tribunal: SA (Section 82(2)(d): interpretation and effect) Pakistan [2007] UKAIT 00083.

13.
The Applicant broadly submits that: (i) the issue of whether the Respondent's decision of 24 May 2013 is an immigration decision is a matter to be determined by the Upper Tribunal in the instant proceedings; and, (ii) that this issue should be determined in his favour because he had leave to remain at the time he made his application on 21 November 2012 – his leave having been extended after 30 July 2012 by operation of section 3C of the 1971 Act. Consequently, the decision of 24 May 2013 is of a type identified in section 82(2)(d) of the 2002 Act.

14.

The Respondent submits that: (i) the issue of whether the decision of 24 May 2013 is an immigration decision is apt only for consideration by the First-tier Tribunal and not by the Upper Tribunal in judicial review proceedings; and, (ii) in any event, the Applicant does not have a right of appeal because he did not have leave to remain as of 21 November 2012 and, consequently, the refusal of such application on 24 May 2013 does not fall within the auspices of section 82(2)(d).

15.
The parties agree, correctly, that it was, and still is, open to the Applicant to file a notice of appeal with the First-tier Tribunal in relation to the decision of 24 May 2013, requesting that it resolve the dispute identified above i.e. whether the decision of 24 May 2013 was an immigration decision carrying with it a right of appeal.

16.
I observe that this was exactly the course taken by the appellant in Basnet (Validity of application – respondent) [2012] UKUT 00113, a case with a factual matrix similar to that in the instant case. Mr Basnet had applied for a variation of his leave to remain on 13 May 2011, this being prior to the expiry of his leave. After the expiry of such leave the Secretary of State treated Mr Basnet's application as invalid because the specified fee had not been paid. A further application was made to the Secretary of State shortly thereafter, on 22 June 2011, which was subsequently refused. The decision letter relaying such refusal advised Mr Basnet that he had no right of appeal against that decision. Despite this, he filed a notice of appeal with the First-tier Tribunal - the First-tier Tribunal thereafter concluding that it had no jurisdiction to consider the appeal.

17.
Undeterred by this Mr Basnet appealed to the Upper Tribunal. The Upper Tribunal (Blake J and UTJ Macleman), sitting in its appellate capacity, set aside the decision of the First-tier Tribunal; accepting on the facts of the case that Mr Basnet did have a right of appeal against the Secretary of State's decision pursuant to section 82(2)(d) of the 2002 Act because the Secretary of State had failed to demonstrate that the original application made by Mr Basnet was invalid and therefore, by operation of section 3C of the 1971 Act, Mr Basnet still had leave to remain at the time of making his application of 22 June.

18.
Despite Mr Pennington-Benton's acceptance that it is open to the instant Applicant to file a notice of appeal with the First-tier Tribunal and that the First-tier Tribunal would be entitled to consider whether the decision of 24 May carries with it a right of appeal, he submits that this should not lead to the Upper Tribunal declining to exercise its discretion to grant the Applicant relief. The reasons it is said that this is so are numerous, but can be usefully divided into two categories:

(i)
Those deployed in support of an over-arching submission that the Applicant does not have an alternative remedy available to him; and, if this submission is not met favourably by the Tribunal, then,

(ii)
Those prayed in aid of the assertion that the failure of the Applicant to exhaust his alternative remedy should not lead to the Upper Tribunal exercising its discretion so as to refuse the relief sought.

19.
I shall consider these in turn. As to the former, it is said that:

(i)
The notice of decision of 24 May 2013 is invalid. Requiring the Applicant to lodge an appeal with the First-tier Tribunal in such circumstances would necessitate him waiving his right to a valid notice of decision i.e. one which accords with the requirements of the Immigration (Notices) Regulations 2003 ("the Notice Regulations"). He should not be compelled to waive such right, nor is he willing to do so;

(ii)
Any decision by the First-tier Tribunal to extend the time limit for appealing is discretionary. It cannot be said with any degree of certainty that time would be extended by the First-tier Tribunal and, consequently, it cannot be said that the Applicant has an alternative remedy;

(iii)
In the instant judicial review the Applicant seeks, amongst other things, a declaration that "[his] first application was valid and remains outstanding " [1] . This is a remedy that cannot be achieved in the First-tier Tribunal.

20.
The first and second of these contentions can be taken together and I consider them on the hypothetical basis most beneficial to the Applicant i.e. that the decision of 24 May 2013 is capable of attracting a right of appeal to the First-tier Tribunal.

21.
If this is assumed to be so, it is plain that the Respondent's notice of decision of 24 May fails to comply with the requirements of the Notice Regulations because it fails to identify the Applicant's entitlement to bring an appeal in relation to it.

22.
In OI (Notice of decision: time calculations) Nigeria [2006] UKAIT 00042 the Tribunal gave consideration to the issue of whether an appellant required an extension of time for lodging an appeal with the Tribunal in circumstances where, inter alia , the notice of decision bore a misleading statement as to the time limit for bringing such an appeal. The Tribunal observed as follows at [15]:

"The Notices Regulations are clearly made for the benefit of those who receive the notices, and as a result the Tribunal has regularly held that an applicant or appellant may waive a requirement of the Regulations by submitting a notice of appeal even if the Regulations have not been fully complied with. But an applicant is entitled to require compliance with the Regulations, and if a notice has not been served by one of the methods specified in Regulation 7(1), it has not been lawfully served at all, and in that case time has not yet begun to run against any intending appellant."

23.
Two matters of relevance to the instant application can immediately be extracted from the decision in OI : first, if a decision notice issued by the Secretary of State is required to, but does not, comply with the requirements of the Notice Regulations then time for bringing an appeal against such decision does not begin to run until the requirements of the Regulations have been complied with; second, a recipient of a decision notice failing to comply with the Notice Regulations can, nevertheless, bring an appeal before the Tribunal by waiving the need for the Respondent to comply with the requirements of such regulations.

24.

The former of these conclusions entirely disposes of the Applicant's submission identified in paragraph 19(ii) above – as Mr Pennington-Benton recognised during the course of the hearing. In such circumstances I intend to say no more about that submission herein.

25.
Mr Pennington-Benton submitted that the decision in OI goes further, and establishes as a matter of legal principle that a person cannot be compelled to waive his or her right to a notice of decision that complies with the requirements of the Notice Regulations. Consequently, it is said, the Applicant does not have an alternative remedy available to him.

26.
Although reference is made in paragraph 15 of OI to an applicant being entitled to require compliance with the Notice Regulations, this statement must be viewed in the context in which it was made and the issue before the Tribunal i.e. when and whether time had started to run for the purposes of bringing an appeal in relation to a decision notice that was defective, inter alia , for its failure to comply with the requirements of such regulations.

27.
There is nothing in reasoning or conclusions of the Tribunal in OI that impinges on the issue now before me. In particular there is nothing said in OI in relation to the consequences for an applicant who chooses not to waive compliance with the Notices Regulations but instead seeks to enforce such compliance by way of an application for judicial review in order to obtain the very thing that could have been obtained by waiving the need for compliance in the first place.

28.
This is not to compel the Applicant to waive that which he is entitled to, but to recognise that it is his choice as to whether he waives the need for the Respondent to comply with the Notices Regulations. The availability of such a choice is, in my view, a matter relevant to the exercise by the Upper Tribunal of its discretion whether to grant relief in judicial review proceedings.

29.
As to Mr Pennington–Benton's final submission on the issue of whether the Applicant has an alternative remedy, this is no-more than a recasting of the submissions I have already dealt with above. The issue of whether the "first application" i.e. that of 4 April 2012, or indeed the application "as modified by the 27 July 2012 application" , remained extant and was still pending as of the date of the application of 21 November 2012, is one of the questions that the First-tier Tribunal will be required, and is entitled, to determine when considering whether the decision of 24 May 2013 is an immigration decision.

30.
If I am wrong in what I say in the preceding paragraph then this ground, by necessity, must be a challenge to the decision of 21 September 2012. Rule 28(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 requires an application for judicial review to be made promptly or in any event no later than 3 months after the date of decision to which the application relates. The instant application was not lodged until the 22 August 2013. This is a serious and significant delay. No satisfactory explanation for the delay in bringing such proceedings has been provided and, in particular, I do not consider that waiting for the outcome of further applications made to the Respondent provides adequate explanation for such delays. In all the circumstances I do not extend time for lodging judicial review proceedings in relation to the decision of 21 September 2012, if indeed such decision is under challenge.

31.
In my conclusion, the Applicant clearly has an alternative remedy available to him in relation to the issue of whether the decision of 24 May 2013 is an immigration decision. He can, if he so chooses, lodge an appeal to the First-tier Tribunal against such decision. In these circumstances the First-tier Tribunal is entitled, and would be required, to consider whether the decision of 24 May 2013 is an immigration decision. If it concludes in the Applicant's favour on this issue it will go on to hear the substance of his appeal against such decision.

32.
Moving on to the alternative submission that if, contrary to the Applicant's assertions, he does have an alternative remedy then the Upper Tribunal should, nevertheless, not exercise its discretion so as to refuse him relief. In this respect Mr Pennington-Benton's contentions can be summarised thus:

(i)
The existence of an alternative remedy is not an absolute bar to judicial review;

(ii)
The "tribunalisation" of judicial review partially erodes the rationale for requiring a person to exercise an alternative remedy prior to bringing judicial review proceedings;

(iii)
There is significant factual and legal uncertainty as to whether a right of appeal exists in any given case. It is, therefore, not unreasonable to expect an Applicant to issue judicial review proceedings rather than lodge a notice of appeal to the First-tier Tribunal;

(iv)
Requiring a person to lodge a notice of appeal with the First-tier Tribunal in order for the First-tier Tribunal to determine whether that person has a right of appeal risks adding a further layer of costs and delay, the former of which is not recoverable. In such circumstances it is "much better for the individual to seek judicial review proceedings in the first place.";

(v)
There are numerous cases similar to the instant one where the courts have granted relief sought in judicial review proceedings notwithstanding the possibility of an appeal being brought to the First-tier Tribunal. An expectation has arisen that such claims will be dealt with in the judicial review system;

(vi)
In the instant application the issue of whether there is an alternative remedy was raised for the first time after the grant of permission. It would be unfair in all the circumstances to decline to grant the Applicant relief on the basis of the existence of such remedy.

33.
Taking these in turn. Mr Pennington-Benton is clearly correct in his submission that the existence of an alternative remedy is not an absolute bar to obtaining relief by way of judicial review. The question of whether there is a suitable alternative remedy arises in the context of the exercise of the Tribunal's discretion. Any consideration as to how such discretion should be exercised is necessarily fact sensitive.

34.
Nevertheless, where a specialist statutory regime has been established by Parliament, there would need to be special reasons or exceptional circumstances to circumvent that regime and permit relief

to be obtained on an application for judicial review: see R (on the application of) Willford v Financial Services Agency [2013] EWCA Civ 677 and, in an immigration context; RK (Nepal) v Secretary of State for the Home Department [2009] EWCA Civ 359.

35.
What constitutes 'exceptional circumstances' cannot be exhaustively defined. However, in assessing whether an alternative remedy is convenient, expeditious and effective (per Simon Brown LJ in R (on the Application of) Devon County Council ex parte Barker [1995] 1 All ER 73) and not clearly unsatisfactory (per Moore-Bick LJ in Willford at [20]), regard must be had to the nature and context of the decision, the statutory regime, the reach of the remedy, the need for fact finding and the convenience of the process offered by the alternative remedy.

36.
Mr Pennington-Benton submits, in reliance on the Court of Appeal's decision in E1 (OS Russia) [2012] EWCA Civ 357, that in cases where the Secretary of State's notice of decision is invalid the "normal response" of the Court or Tribunal should be to quash the notice. It is important to observe, however, that this was not said in the context of there being a suitable alternative judicial remedy available. [2] In the instant case the First-tier Tribunal has the power to conclude that the Respondent's decision was not in accordance with the law. The issue to be considered is whether in such circumstances the Upper Tribunal should, nevertheless, determine this same matter in the context of judicial review proceedings. Properly analysed, nothing in the decision of E1 (OS Russia) speaks to this issue.

37.
Moving on, I do not accept that it is correct to say that the "tribunalisation" of judicial review has, to any material extent, eroded the rationale for requiring an alternative remedy to be pursued prior to the bringing judicial review proceedings.

38.
Although, as Mr Pennington-Benton alludes to in his submissions, it can no longer be suggested that judges in the forum of the proposed alternative remedy i.e. the First-tier Tribunal, have greater expertise in the particular area of law in issue than those determining the applications for judicial review i.e. the Upper Tribunal, the existence of such expertise in the statutory appeal process has played only a small, if any, part in the rationale for requiring an alternative remedy to be pursued prior to lodging an application for judicial review.

39.
In R v Panel on Take-overs and Mergers ex p Guinness PLC [1990] 1 QB 146 (at [177E]) Lord Donaldson MR identified, when considering the relevance of an alternative remedy, that the "rationale for the court's self-imposed fetter upon the exercise of discretion" in judicial review proceedings was "twofold" :

"First, the point usually arises in the context of statutory schemes and if Parliament directly or indirectly has provided for an appeals procedure, it is not for the court to usurp the functions of the appellate body. Second, the public interest normally dictates that if the judicial review jurisdiction is to be exercised, it is to be exercised very speedily and, given the constraints imposed on limited judicial resources, this necessarily involves limiting the number of cases…"

40.
In Willford Lord Justice Moore-Bick also observed that allowing a claim for judicial review to proceed in circumstances where there existed a statutory procedure for contesting the decision risked "…

undermining the will of Parliament " (at [23]). This is a point which applies with equal force whether it is the Upper Tribunal or High Court giving consideration to applications for judicial review.

41.
On a more practical level, although the procedure in judicial review claims can be adapted to allow for the determination of a disputed question of fact, the court in such claims " does not habitually decide issues of fact on contested evidence and is not generally equipped to do so…" : Anifrijeva v London Borough of Southwark [2003] EWCA Civ 1406. " The basic rule is that where there is a dispute on evidence in a judicial review application, then in the absence of cross-examination, the facts in the defendants' evidence must be assumed to be correct…" : R (Mcvey) v Secretary of State for Health [2010] EWHC 437 (Admin) at [35] – this, of course, being in contrast to the position in the statutory appeal regime.

42.
Turning to the third reason deployed by Mr Pennington-Benton as to why it is said that this Applicant, and other applicants in a similar position to him, should not be required to avail themselves of the alternative remedy of lodging a notice of appeal with the First-tier Tribunal, I have great difficulty in understanding why, assuming it is right to say that there is a significant factual and legal uncertainty as to whether a right of appeal exists in any given case, this should point towards judicial review being the appropriate route to decide such a point.

43.
The First-tier Tribunal is well equipped, and often does, deal with factually and legally complex issues and appeals and there is no good reason advanced as to why, even in the face of such factual and legal complexity, it cannot determine whether the Respondent has made an immigration decision.

44.
If the First-tier Tribunal declines jurisdiction and it is thought by an appellant that such decision is unlawful, then adequate remedies are available. A jurisdictional decision of the First-tier Tribunal contained in a determination made after the appeal has passed the duty judge "screening" stage, is appealable to the Upper Tribunal: Ved and another (appealable decisions; permission applications; Basnet) [2014] UKUT 00150 (IAC). If such a decision is made prior to the appeal passing the 'screening' stage, then an appellant can pursue an application for judicial review against the First-tier Tribunal.

45.
Mr Pennington Benton's submission regarding the impact of complexity of ascertaining whether a person has a right of appeal is, it appears, partly borne out of what is said to be a potentially unfair consequence for a defined group of persons i.e. (i) those persons who receive a decision from the Secretary of State which indicates that there is no right of appeal against it, (ii) who, because of the legal and factual complexities of determining whether a right of appeal exist, are either unsure or believe the Secretary of State to be incorrect on this issue, (iii) who thereafter lodge an appeal with the First-tier Tribunal and the First-tier Tribunal refuse to admit such appeal and (iv) who still wish to challenge the underlying decision made by the Secretary of State but, as a consequence of the time taken in pursuing the alternative remedy, are now out of time to do so.

46.
There is an obvious and complete answer to this submission, that being the Upper Tribunal's power to extend time for the lodging of the application for judicial review; the existence of which entirely negates any potential unfairness in the scenario postulated by Mr Pennington-Benton.

47.
Mr Pennington-Benton's next point i.e. that there is a risk of additional costs and delay if an applicant seeks to lodge an appeal with the First-tier Tribunal, is met squarely by Lord Justice Moore-Bick's reiteration in Willford that it is necessary to guard against granting judicial review in cases where there is an alternative appeal regime, merely because it might be more effective and convenient to do so.

48.
In any event, I cannot readily understand why it is said that "a further layer of costs and delay" would be added by an applicant lodging an appeal with the First-tier Tribunal, rather than bringing judicial review proceedings in order to obtain a declaration to the same effect. If a person is entitled to appeal to the First-tier Tribunal, and lodges a notice of appeal in this regard – as opposed to bringing an application for judicial review - then not only will that person have saved the costs and time associated with the bringing of judicial review proceedings, but both the costs and time of the Secretary of State and the Upper Tribunal will also be saved.

49.
Neither do I accept that the Applicant gains any assistance from the fact that "in the past no issue has been taken by the Administrative Court or Upper Tribunal, by either the SSHD or the courts themselves, on this point." – by which Mr Pennington–Benton is referring to applicants in a similar position to the instant applicant but against whom an alternative remedy point was not taken in judicial review proceedings.

50.
This is a broad submission to make. In its support Mr Pennington-Benton draws attention to a small number of judgments in judicial review applications given after a substantive hearing in which the issue of whether a decision made by the Secretary of State amounts to an immigration decision was determined absent the alternative remedy point being taken against the particular applicant.

51.
In my view these decisions provide no assistance to the instant applicant. First, there is no identification in any of the judgments that the alternative remedy issue was ventilated. Second, nothing in the judgments identifies why this was so. Third, it is not suggested that Mr Pennington-Benton has undertaken a search of the many decisions on permission applications that both this Tribunal and the Administrative Court issue each year, in an attempt to identify applicants that have been unsuccessful as a consequence of having an alternative remedy. This is significant because the most likely stage of the proceedings that the alternative remedy point will bite against an applicant is the permission stage.

52.
Finally, turning to the sixth of the points relied upon by Mr Pennington-Benton, I do not accept that the fact that the alternative remedy point was not raised against the Applicant until after permission to bring these proceedings was granted, should lead to a conclusion that it is now unfair to require the Applicant to pursue the alternative remedy. Fairness dictates that the Applicant be given a proper opportunity to deal with points taken against him. That opportunity was provided through the mechanism of adjourning the hearing of 9 February 2015, and allowing the Applicant to re-cast his case to deal with this issue – an opportunity which he grasped. That is not to say that I have treated the stage in the proceedings at which such point was taken as irrelevant to my consideration of how

the Tribunal's discretion should be exercised - it is simply that I do not accept Mr Pennington-Benton's submission that it is a factor that points determinatively in his client's favour.

53.
Having considered all of the circumstances of this case in the round I am satisfied that there is an effective alternative remedy available to the Applicant such that, as an exercise of discretion, this application should be refused.

54.
The Applicant can lodge an appeal with the First-tier Tribunal against the decision of the 24 May 2013 and I am satisfied that the First-tier Tribunal has power to determine whether such decision is an immigration decision carrying with it a right of appeal. In these circumstances I can see no useful purpose in making any further comment in relation to this issue.

55.
Although each case must be determined on its own facts, in cases where a person seeks to dispute the Secretary of State's assertions as to the availability of an appeal to the First-tier Tribunal, the appropriate course is for such person to lodge a notice of appeal with the First-tier Tribunal requesting that it determine this issue. Given the existence of this suitable alternative remedy, it will only be in exceptional circumstances that the Upper Tribunal will exercise its discretion and grant relief to a person who seeks to raise this same issue before it in judicial review proceedings brought against the Secretary of State.

Decision

56.
For the reasons given above, the Applicant's claim for judicial review is dismissed.

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[1] Paragraph 50 of the Applicant's consolidated skeleton argument.

[2] See, however, section 15 of the Immigration Act 2014 with transitional provisions.