Upper Tribunal
(Immigration and Asylum Chamber)

R (on the application of Khurram) v Secretary of State for the Home Department (effective service; 2000 Order) IJR [2016] UKUT 00281(IAC)

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

Heard at Field House

On 16 March 2016

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE QUEEN (ON THE APPLICATION OF MUHAMMAD KHURRAM)

Applicant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Applicant: Mr A Syed-Ali, instructed by Ropemakers Solicitors

For the Respondent: Mrs J Gray, instructed by the Government Legal Department

1. For the purposes of Art 8ZA(2) of the Immigration (Leave to Enter and Remain) Order 2000 (SI 2000/1161)(as inserted by SI 2013/174 with effect from 12 July 2013), a notice is not sent to a postal address "provided for correspondence by the person" if the address is provided to the Secretary of State by a third party such as a sponsor educational institution unless the third party is the authorised agent of the person.

2. However, where no postal address (or e-mail address) for correspondence has been provided, an address provided by a third party may be the "last-known or usual place of abode" of the person within Art 8ZA(3)(a) to which a notice may be sent.

JUDGMENT

JUDGE GRUBB:

1.

The applicant seeks to challenge by way of judicial review the decision of the Secretary of State taken on 30 July 2014 refusing him leave to remain based upon his private life in the UK under the Immigration Rules (HC 395 as amended) and Art 8 of the ECHR.

2.
The applicant does not challenge the substance of the respondent's decision. Instead, the applicant contends that he has an in-country right of appeal against that decision to the First-tier Tribunal.

The Claim

3.
The basis of that claim is as follows. The applicant entered the UK on 5 February 2013 with entry clearance (taking effect as leave to enter) valid until 13 June 2014 as a Tier 4 (General) Student to study at Cranford College.

4.
The applicant claims that when he made his application for further leave on 4 June 2014 that was before the expiry of his leave to enter and that, therefore, he had an in-country right of appeal under s.82(1) and 82(2)(d) of the Nationality, Immigration and Asylum Act 2002 (the "NIA Act 2002").

5.
The applicant contends that the respondent's decision to curtail his leave with effect to 20 January 2014 set out in a letter dated 21 November 2013, based upon the applicant having completed his studies, was ineffective.

6.
The applicant contends that the respondent's letter of 21 November 2013 was not sent in accordance with the provision of the Immigration (Leave to Enter and Remain) Order 2000 (SI 2000/1161 as amended by SI/1749) (the "2000 Order") and was not, therefore, properly "given" in accordance with s.4(1) of the Immigration Act 1971.

7.
Whilst it is accepted that the letter was sent by recorded delivery to an address provided by the applicant's sponsor to the Secretary of State on request, the applicant contends that was not a proper method of service falling within Art 8ZA of the 2000 Order, in particular Art 8ZA of the 2000 Order.

8.
The applicant also contends, though somewhat more weakly, that – even if the curtailment decision was sent in accordance with Art 8ZA – the applicant had rebutted the presumption that notice was "given" under Art 8ZB of the 2000 Order.

9.
It is not contended by the applicant that the curtailment decision was other than a lawful decision under para 323A(a)(ii)(2) of the Immigration Rules on the basis that Cranford College had informed the Secretary of State on 4 September 2013 that the applicant had ceased studying with them.

10.
The only issue is whether that curtailment notice was properly served ("given") so as to lawfully curtail the applicant's leave, by its terms, to 20 January 2014.

11.

If the curtailment was lawful and so effective, then the applicant did not have leave thereafter and he has no right of appeal against the refusal of his leave on 30 July 2014. By contrast, if his leave continued until 13 June 2014, because it had not lawfully been curtailed, then his application for further leave made on 6 June 2014 was in time and the refusal to vary (by extension) his leave would give rise to a right of appeal under s.82(1) against an immigration decision falling within s.82(2)(d) of the NIA Act 2002.

Preliminary Matters

12.
Two preliminary matters were raised by the Secretary of State in the detailed grounds of defence and in the skeleton argument of Mrs Gray, who represented the respondent.

13.
The first concern, the issue of the timeliness of the applicant's application for judicial review. That matter arises in this way. The decision to refuse the applicant leave was made on 30 July 2014. However, the claim form sought, on its face, to challenge the respondent's response on 1 September 2014 to the pre-action Protocol letter refusing to reverse her decision of 30 July 2014. The claim form was sealed by UTIAC on 1 December 2014. It was, therefore, outside the three month limit for challenging the decision of 30 July 2014.

14.
This was not a point raised by the respondent in the acknowledgement of service or at the oral renewal hearing on 10 September 2015 when I granted permission to bring these proceedings. The matter was only raised by Mrs Gray in the detailed grounds of defence dated "October 2015" (and therefore subsequent to the oral renewal hearing) and in her skeleton argument for the substantive hearing dated 4 March 2016.

15.
Before me, Mrs Gray accepted that she could not take the time point at this stage of the proceedings. She referred me to a decision of the House of Lords in R v Criminal Injuries Compensation Board, ex parte A [1999] 2 AC 330. She accepted that the House of Lords, in the speech of Lord Slynn of Hadley (with whom the other Law Lords agreed), concluded that a timeliness issue, and in particular the issue of extending time, could not be considered at the substantive hearing. Lord Slynn said this:

"If leave is given, then unless set aside, it does not fall to be re-opened at the substantive hearing on the basis that there is no ground for extending time under Order 53, R4(1). At the substantive hearing there is no 'application for leave to apply for judicial review' leave having already been given."

16.
Mrs Gray accepted that, in the light of this, it was not open to the Secretary of State to now take the point that the applicant's claim was out of time and that time should not be extended.

17.
That concession, in my judgment, disposes of this point. It is a matter of some regret that the issue of timeliness was not raised earlier in the proceedings and was only raised, in effect, in preparation for the substantive hearing after permission had been granted at the oral hearing.

18.
I would simply add that, applying the approach to the issue of extending time set out in SS (Congo) and Others v SSHD [2015] EWCA Civ 387, in particular at [93], I would consider this to be a proper

case to extend time. The delay of a month is substantial and I would conclude that it is “serious” though not “significant”. There has been no explanation for the delay offered. However, there is little, if any, prejudice to the respondent beyond the fact of the decision being subject to challenge and the claim raises an important point on the proper application of the 2000 Order. This would, I venture to say, be a proper case to extend time. However, given the stance taken by Mrs Gray the issue of timeliness does not arise.

19.
The second matter raised by Mrs Gray concerned the state of the applicant’s grounds of claim. At the oral renewal, the applicant’s (then) Counsel sought to rely upon grounds different from those set out in the claim form. Although there was no formal direction to prepare amended grounds reflecting the basis upon which permission had been granted, Mrs Gray (who represented the respondent at that hearing also) indicated that she had been expecting a set of amended grounds from the applicant’s representatives. None have, in the result, been filed with the Tribunal with the appropriate application to amend.

20.
At the hearing, I suggested that a possible course was to treat the skeleton argument of Mr Syed-Ali (who now represented the applicant) as being the amended grounds. Mrs Gray accepted that the Secretary of State had in her detailed grounds of defence and skeleton argument anticipated the amended grounds and the basis of the applicant’s claim that the curtailment decision was ineffective, that being the basis upon which permission had been granted. She did not demur from my taking Mr Syed-Ali’s skeleton argument as a set of amended grounds. I am content to do so and grant the applicant permission to amend his grounds accordingly. To do otherwise would elevate form over substance given the absence of any prejudice or misunderstanding as to the basis of the applicant’s claim in this case.

21.
With those preliminary matters put aside, I turn to the substance of the applicant’s claim.

The Relevant Provisions

22.
The relevant legal provisions concerned with the giving of notice are contained within s.4(1) of the Immigration Act 1971 and 2000 Order as amended by the Immigration (Leave to Enter and Remain) Amendment Order 2013 (SI 2013/1749) with effect from 12 July 2013. The latter deals with the provision of notice of decisions not subject to appeal to the First-tier Tribunal under the NIA Act 2002 such as the decision in this case to curtail the applicant’s leave but not with immediate effect. The provisions are considered and analysed in my recent decision in R (Arslan Mahmood) v SSHD (effective service – 2000 Order) IJR [2016] UKUT 0057 (IAC) from which judgment I gratefully borrow what follows.

23.
Section 4(1) of the Immigration Act 1971 requires notice in writing to be given of a decision, inter alia , to vary a person’s leave under s.3(3)(a) of the 1971 Act. So far as relevant s.4(1) provides as follows:

“The power under this act to give or refuse leave to enter the United Kingdom shall be exercised by immigration officers, and the power to give leave to remain in the United Kingdom, or to vary any leave under section 3(3)(a) (whether as regards duration or conditions), shall be exercised by the

Secretary of State; and, unless otherwise allowed by or under this act, those powers shall be exercised by notice in writing given to the persons affected, except that the powers under section 3(3)(a) may be exercised generally in respect of any class of persons by order made by statutory instrument."

24.
The power to vary an individual's limited leave to enter or remain includes "restricting … the limitation of its duration and …" and thus encompasses the power to curtail an individual's leave. Section 4(1) provides that "notice in writing" of such a decision shall be "given" to the person affected.

25.
Section 3A of the 1971 Act empowers the Secretary of State by Order to make provision with respect to varying leave to enter in the UK (s.3A(1)) and, in particular, to provide for the "form or manner" in which leave may be varied (s.3A(2)(a)). Similar powers can be found in s.3B of the 1971 Act in respect of varying leave to remain.

26.
Prior to 12 July 2013, there was no statutory instrument which dealt with the giving of notice for non-appealable decisions. The giving of notice of decisions which were appealable to the First-tier Tribunal under the NIA Act 2002 was provided for in the Immigration (Notices) Regulations 2003 (SI 2003/658 as amended). Non-appealable decisions remained subject to the common law and, as the Upper Tribunal held in Syed (curtailment of leave – notice) [2013] UKUT 00144 (IAC), the requirement that the decision (there a non-appealable curtailment decision) should be "communicated to the person concerned" (see [28]). As a consequence, a notice served "to file" had not been "given" in accordance with s.4(1) of the 1971 Act and was, as a consequence, ineffective to curtail an individual's leave.

27.
As a consequence of Syed , the 2000 Order was amended with effect from 12 July 2013 to contain provisions dealing with the giving of notice and presumptions in respect of receipt in respect of non-appealable immigration decisions such as the curtailment decision in this case. Those provisions are in Arts 8ZA and 8ZB of the 2000 Order and are central to this case.

28.
Article 8ZA sets out the methods and means by which a notice in writing may be "given":

" **Grant, refusal or variation of leave by notice in writing**

(1) A notice in writing -

(a) giving leave to enter or remain in the United Kingdom;

(b) refusing leave to enter or remain in the United Kingdom:

(c) refusing to vary a person's leave to enter or remain in the United Kingdom: or

(d) varying a person's leave to enter or remain in the United Kingdom,

may be given to the person affected as required by section 4(1) of the Act as follows:

(2) The notice may be –

(a) given by hand;

(b) sent by fax;

(c) sent by postal service to a postal address provided for correspondence by the person or the person's representative;

(d) sent electronically to an e-mail address provided for correspondence by the person or the person's representative;

(e) sent by document exchange to a document exchange number or address; or

(f) sent by courier.

(3) Where no postal or e-mail address for correspondence has been provided, the notice may be sent -

(a) by postal service to –

(i) the last-known or usual place of abode, place of study or place of business of the person; or

(ii) the last-known or usual place of business of the person's representative; or

(b) electronically to –

(i) the last-known e-mail address for the person (including at the person's last-known place of study or place of business); or

(ii) the last-known e-mail address of the person's representative.

(4) Where attempts to give notice in accordance with paragraphs (2) and (3) are not possible or have failed, when the decision-maker records the reasons for this and places the notice on file the notice shall be deemed to have been given.

(5) Where a notice is deemed to have been given in accordance with paragraph (4) and then subsequently the person is located, the person shall as soon as is practicable be given a copy of the notice and details of when and how it was given.

(6) A notice given under this article may, in the case of a person who is under 18 years of age and does not have a representative, be given to the parent, guardian or another adult who for the time being takes responsibility for the child."

29.
Article 8ZB provides for certain rebuttable presumptions of when notice has "been given" when a notice is sent in accordance with Art 8ZA. So far as relevant, it is in the following terms:

" **Presumptions about receipt of notice**

(1) Where a notice is sent in accordance with article 8ZA, it shall be deemed to have been given to the person affected, unless the contrary is proved -

(a) where the notice is sent by postal service -

(i) on the second day after it was sent by postal service in which delivery or receipt is recorded if sent to a place within the United Kingdom;

(ii) on the 28 th day after it was posted if sent to a place outside the United Kingdom;

(b) where the notice is sent by fax, e-mail, document exchange or courier, on the day it was sent.....".

30.
The scope and application of these provisions was considered in my recent decision of R (Arslan Mahmood) v SSHD . At [37], I summarise the effect of Art 8ZA as follows:

"As will be seen, Art 8ZA(2) provides a number of methods by which a notice "may be given to the person affected" as required by s.4(1) of the 1971 Act. Notice may be given by hand; sent by fax; sent by post to the address provided by the individual or his representatives for correspondence or electronically by e-mail to the e-mail address given "for correspondence" by the individual or his representatives. Art 8ZA(3) provides that where no postal or e-mail correspondence address is given, the notice may be sent by post or electronically to a number of other possible addresses relating to the applicant or his representatives such as the last known place of abode or study or e-mail address. Finally, by virtue of Art 8ZA(4) where attempts to give notice by these methods have failed or are not possible, then the decision may be served "on file" and is deemed to have been given. Although in this latter situation, where the person is subsequently located he must be given a copy of the notice as soon as is practicable (Art 8ZA(5))."

In Mahmood , the central issue was whether a curtailment decision sent to an e-mail address provided by the individual in his visa application form had been "given" in accordance with s.4(1) and the 2000 Order in circumstances where the individual claimed that he had no access to the e-mail account at that address.

31.
In Mahmood , I concluded that a notice of decision was "given" when it was "sent" in accordance with a method set out in Art 8ZA and was delivered to the individual's postal or e-mail address given for correspondence according to that method. I concluded that Art 8ZB, when it applied, created rebuttable presumptions of both delivery and the date of delivery. There was no requirement that the individual should have actual knowledge of the notice or its contents. Consequently, subject to rebuttal, a notice of curtailment decision attached to an e-mail sent to an individual's e-mail (correspondence) address was "given" on the day it was sent and delivered to the individual's e-mail address.

32.
In this claim, Mr Syed-Ali's principal point is that the notice of curtailment sent to a postal address provided by the applicant's sponsor institution was not, as required by Art 8ZA(2)(c), sent by postal service to a postal address "provided for correspondence by the person " (my emphasis).

33.
In my judgment, that submission is correct. Article 8ZA(2)(c) does not contemplate the provision of a correspondence address to the Secretary of State by an applicant through a third party in general. That, in my judgment, is the natural and ordinary meaning of the words "provided … by the person". As a matter of ordinary usage of language, where the source of the address (postal or e-mail) is not the individual themselves, it will not, in general, be provided by the person if provided to the Secretary of State by a third party. It is rather provided by the third party and that does not fall within Art 8ZA(2)(c).

34.
Of course, if the third party is an authorised agent of the individual, for example his legal representatives, then provision by them of the applicant's postal address can properly be said to be a

postal address provided for correspondence “by the person”. A sponsor institution of a student cannot, without more, properly be said to be acting as the agent of the student if it supplies to the Secretary of State the individual’s address held by the sponsor for its purposes.

35.
Mrs Gray sought to argue that the phrase encompassed the provision to the respondent of the individual’s address by any third party (subject to data protection concerns), but in particular by a Tier 4 sponsor by reference to the report in Parliament of the legislative history of the amendment to the 2000 Order introducing Arts 8ZA and 8ZB. She referred me to a passage in the statement made by the minister for immigration (Mark Harper) in a committee debate on the amendment to the Order on 3 July 2013 (at tab 5, page 3-9) in the following terms:

“If the migrant enters the country having been issued with their visa overseas, it is likely that we will not have a UK postal address for the migrant on record. We can seek to serve the notice via the migrant’s representative, if they have one. If that is not possible, or if it fails, we try to serve the notice via the migrant’s sponsor. In both cases, however, it is very hard to prove service of the notice on the individual. We now ask sponsors to provide the migrant’s contact details with the notification, or we write to the sponsor if no details have been provided. That has improved our ability to serve such notices, but the provision of an address does not guarantee service, as the address could be false, defective or no longer in use by the migrant.”

36.
Mrs Gray submitted that it was specifically contemplated, therefore, that the Order would by amendment encompass the Secretary of State seeking a migrant’s contact details from a sponsor.

37.
Mrs Gray further placed reliance upon the Secretary of State’s guidance to sponsors under the Tier 2, 4 and 5 Points-Based System (at page 9) that a sponsor must keep a record of: “a history of the migrant’s contact details (United Kingdom residential address, telephone number, mobile telephone number). This must be updated regularly.” That obligation, Mrs Gray relied upon, to support her contention that Art 8ZA(2)(c) should not be construed as if the words “to the Secretary of State” were added to the words of the provision, namely that the notice was sent to a postal address “provided for correspondence by the person”.

38.
As I have already indicated, the ordinary and natural meaning of the words in Art 8ZA(2)(c) seem to me to require that the postal address (or an e-mail address under Art 8ZA(2)(d)) be provided by the person to the Secretary of State, rather than through a third party unless that third party is the individual’s authorised agent. Nothing in the minister’s speech or, indeed in the guidance, mandates that Art 8ZA(2)(c) must be construed so as to cover the situation where, as in this case, the individual has not personally provided their correspondence address to the Secretary of State but, instead, that address has been provided by the sponsor institution. There is undoubtedly good reason why a sponsor should retain contact details of those persons studying at its institution and, to the extent requested, provide those details to the Secretary of State. As the minister made clear, where an individual has entered the UK on a visa it is unlikely that they have provided a UK postal address. If they have failed to subsequently remedy that omission, it makes perfectly practical sense that the Secretary of State should be able to obtain that address from the institution at which they have been studying. That does not mean, however, that notice given to that address falls within Art 8ZA(2)(c).

39.

In fact, in such a situation contemplated by the minister notice sent to that address would fall within Art 8ZA(3)(a)(i). In the absence of any postal or e-mail address given for correspondence by the individual, the notice may be sent by post to the “last-known or usual place of abode”. The address provided by the sponsor is very likely to amount to the “last-known or usual place of abode” of the individual.

40.
In truth, the provisions in Arts 8ZA(2), (3) and (4) provide a panoply of mechanisms for giving notice by the Secretary of State. There is, in my judgment, no need to distort the ordinary and natural meaning of Art 8ZA(2)(c) to include a situation where a third party (apart from an agent) has provided the individual’s address to the Secretary of State.

41.
First, the Secretary of State can send a notice by post (1) to the address for correspondence provided by the person; or (2) the address of the person’s representative. It is clear to me that “the person’s representative” in Art 8ZA(2)(c) (and (d)) refers to his representatives in immigration matters. Art 1(2) of the 2000 Order defines “representative” as a person who:

“appears to the decision-maker – (a) to be the representative of the person referred to in Article 8ZA(1); and (b) not to be prohibited from acting as a representative by section 84 of the Immigration and Asylum Act 1999”.

42.
Leaving aside the partial circularity of the definition, the person must be “representing” the individual and the cross-reference to the 1999 Act’s prohibition on those who may provide “immigration advice or services” clearly contemplates legal representatives who provide such advice or representation in litigation and are “representing” the individual. It cannot encompass an educational institution which does no more than provide educational services to an individual.

43.
Secondly, notice can be given electronically by being sent to the e-mail address provided for correspondence: (1) by the person themselves; or (2) by the person’s representatives (Art 8ZA(2)(c) and (d)).

44.
Thirdly, where no postal or e-mail address for correspondence has been provided by the person or his representatives, the notice may be sent by post to, for example, the last-known or usual place of abode of the individual, their place of study or their place of business or may be sent electronically to the last-known e-mail address of the person or their representative (see Art 8ZA(3)).

45.
Finally, if none of those methods are possible, the notice may be served “to file” in accordance with Art 8ZA(4).

46.
In a case such as the present where the applicant has not provided a UK postal address, and it was not suggested by either representative that the applicant’s address in Pakistan included on his visa application was a “correspondence address”, the Secretary of State may send the notice electronically by e-mail to an address provided by the individual (as occurred in Mahmood) or, in its absence as in

this case, to the individual's postal address provided by the sponsor on the basis that that amounts to his "last-known or usual place of abode".

47.
Mrs Gray raised the difficulty that may be faced by the Secretary of State if the facts were other than in the present case because the applicant had, subsequent to arrival in the UK perhaps following a further but earlier application for leave provided a correspondence address and, on inquiry from the sponsor, a different address was provided by the sponsor. On the face of it, the correspondence address "provided by the person" would not appear to be the most up-to-date address. But, on the proper interpretation of Art 8ZA(2)(c) the apparently more up-to-date address is not one to which the notice can properly be sent. Likewise, Art 8ZA(3)(a)(i) could not apply because, although the new address was likely to be the "last-known or usual place of abode" of the individual, that provision could not apply as it was not a case where "no postal … address for correspondence" had been provided by the applicant.

48.
Clearly, in the circumstances as I have baldly stated them, the Secretary of State would be in some difficulty in the sense that the only address to which a notice could be properly sent would be the earlier (and apparently out of date) address provided by the applicant. To send it to that address might well not seem sensible if the underlying purpose is to provide effective notice to an individual of the adverse immigration decision.

49.
However, the practical solutions in general are clear. First, the applicant may well have provided an e-mail address (as occurred in Mahmood) as a correspondence address. In those circumstances, sending the notice electronically to that address will fall within Art 8ZA(2)(d) as a proper method of sending notice. Secondly, in any event, whilst there appears to be no obligation upon an individual subject to immigration control to notify the Secretary of State of a change of postal or, indeed e-mail address as I pointed out in Mahmood at [65]: "nevertheless any sensible individual who wishes to deal with the Home Office bona fide would inform the Home Office of any change." The fact that the notice would have to be directed to an apparently out of date address is a direct function of the applicant's failure to keep up-to-date, albeit voluntarily, his correspondence addresses whether postal or electronic.

50.
It remains a matter of some surprise to me, as I was told in Mahmood (but on which Mrs Gray had no instructions in this case), that there is no obligation upon an individual subject to immigration control to notify the Home Office of a change of address, whether postal or electronic. Given the very many obligations imposed on those subject to immigration control and sponsors, this obvious "gap" in the system could relatively easily be plugged without, it seems to me, imposing an unreasonable burden on an individual. This is a matter which might well benefit from further consideration by the Secretary of State.

This Claim

51.
Applying the above analysis to the applicant's circumstances, his claim cannot succeed.

52.

First, it was not disputed by Mr Syed-Ali that the respondent sent by recorded delivery the curtailment notice to the address provided by the sponsor on 18 November 2013. Secondly, whilst that was not a “postal address provided for correspondence” by the applicant (Art 8ZA(2)(c)), it was properly to be taken as the “last-known or usual place of abode” of the applicant (Art 8ZA(3)(a)(i)). Thirdly, in the absence of the applicant providing a postal or e-mail address, notice of the curtailment decision was sent in accordance with Art 8ZA(3)(a)(i) for the purposes of s.4(1) of the 1971 Act. Fourthly by virtue of Art 8ZAB(1), as it was sent by recorded delivery, unless the contrary is proved, notice is deemed to have been “given” in the sense of being delivered on the second day after it was sent (Art 8ZB(1)(a)(i) and Mahmood).

53.
As I have said, Mr Syed-Ali did not dispute that the notice had been sent by recorded delivery. Indeed, it is not disputed that the letter was received at the address as it was not returned to the respondent undelivered. In his submissions, Mr Syed-Ali informed me that his instructions were that the applicant had prior to 21 November 2013 moved from that address and had informed both the Home Office and the sponsor. He accepted, however, that there was no evidence before me of that.

54.
The basis of Mr Syed-Ali’s instructions is not consistent with the fact that the sponsor retained the applicant’s address on its files as his contact address at the time of its response to the Home Office on 18 November 2013. There is nothing in the Home Office’s documentation to support the Mr Syed-Ali’s instructions. The GCID record sheet (at page 31 of the bundle) contains no entry suggesting that the applicant, prior to 21 November 2013, informed the Home Office of a change of address. Mr Syed-Ali sought to place some weight on the CID record at page 29 which sets out a different address for the applicant in Buntingford. However, that is clearly a “snapshot” taken on 13 October 2015 of the then current details of the applicant. It casts no light upon what the record showed in November 2013 and, as I have said, nothing in the relevant entries supports any notification by the applicant of a new address prior to the Home Office sending the curtailment notice on 21 November 2013.

55.
In my judgment, therefore, the Secretary of State has established that the notice was sent through the postal service by recorded delivery to the applicant’s last-known or usual place of abode. The presumption in Art 8ZB(1) applies that it was delivered two days later and was therefore “given” in accordance with s.4(1) of the 1971 Act. The applicant has failed to rebut the presumption that notice was “given”. Indeed, Mr Syed-Ali, in his submissions, expressly accepted that if the notice had been sent to a proper address under Art 8ZA then, applying Art 8ZB and its interpretation in Mahmood , it followed that notice had been properly given.

56.
Neither party’s submissions addressed at length whether the proper approach in this case was to apply public law principles, in particular Wednesbury principles, or to treat the issue of whether notice had been “given” as a question of ‘precedent fact’. In her skeleton argument, Mrs Gray submitted (at para 23) that the issue did not arise for resolution in this case but, if it did, Wednesbury principles should apply. I referred to this issue in Mahmood at [70]-[71] leaving the point open. It is not necessary for me to reach a decision in this case. Whichever approach applies, the applicant has failed to make good his claim that lawful notice was not given of the curtailment of his leave in the letter of 21 November 2013 to take effect on 20 January 2014. That proper notice was “given” is, in my judgment, established on the evidence.

57.
It follows, therefore, that the respondent’s decision to refuse the applicant leave to remain on 30 July 2014 was not a decision against which the applicant has an in-country right of appeal under s.82(2)(d) of the NIA Act 2002 as he did not make an in-time application on 4 June 2014. The claim, therefore, fails.

Decision

58.
For these reasons, the claim is dismissed.

Signed

A Grubb

Judge of the Upper Tribunal