Upper Tribunal
(Immigration and Asylum Chamber)

Win (s. 83 – order of events) [2012] UKUT 00365 (IAC)

THE IMMIGRATION ACTS

Heard at Field House **On 4 July 2012**	**Determination Promulgated** ………………………………

Before

Mr C M G Ockelton, Vice President
Upper Tribunal Judge Reeds

Between

KHINE ZAR WIN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D O'Callaghan, instructed by The Legal Resource Partnership
For the Respondent: Mr R Hopkin, Senior Home Office Presenting Officer

The right of appeal under s.83 of the Nationality, Immigration and Asylum Act 2002 arises only if the relevant grant of leave postdates the asylum claim.

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DETERMINATION AND REASONS

Introduction

1. Appeals to the First-tier Tribunal in immigration and asylum matters are governed by the comprehensive provisions in the Nationality, Immigration and Asylum Act 2002, as amended.[1] An appeal lies only against decisions of the sort listed in ss 82, 83 and 83A. Section 82(2) lists the "immigration decisions" that carry a right of appeal. The list includes decisions that a person is to be removed in one of the various ways permitted by the Immigration Acts, decisions terminating a person's leave to be in the United Kingdom, decisions refusing leave to enter the United Kingdom, decisions refusing entry clearance, and decisions refusing to extend a person's leave. But a decision to refuse to extend a person's leave is only an appealable "immigration decision" if "the result of the refusal is that the person has no leave to enter or remain". There is no appeal under s 82 against the grant of leave; and there is no appeal under s 82 against the refusal of leave if, at the time the decision is made, the person has existing leave which continues for the time being, regardless of the refusal to extend it.

2. The incidents of permission to be in a country can, generally speaking, be left to the provisions of national law; but the United Nations' Convention Relating to the Status of Refugees is, as its name suggests, primarily concerned with the status that a refugee has when outside his country of nationality. In order to comply with its obligations under the Convention, the United Kingdom is required not merely to allow refugees to be present in the United Kingdom, but to allow them to be present with the status of refugees. The 2002 Act therefore provides for "upgrade" appeals by people who seek to establish that the leave they have should be leave in the character of a refugee. Section 83A makes such provision for a person whose status as a refugee is terminated but who remains in the United Kingdom with leave in some other category. Section 83 is as follows:-

> "**83. Appeal: asylum claim**
>
> **(1)** This section applies where a person has made an asylum claim and –
> (a) his claim has been rejected by the Secretary of State , but
> (b) he has been granted leave to enter or remain in the United Kingdom for a period exceeding one year (or for periods exceeding one year in aggregate).
>
> **(2)** The person may appeal to the Tribunal against the rejection of his asylum claim."

3. In appeals under s 83 or s 83A, the grounds are limited: the appeal has to be "on the grounds that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention" (see s 84(3) and (4)). No doubt those provisions fail to meet the needs of a person who, for one reason or

[1] See also s 40A of the British Nationality Act 1981; reg 26 of the Immigration (European Economic Area) Regulations 2006

another, does not have the protection of Articles 32 and 33 of the Refugee Convention and so is removable from the United Kingdom. But the vast majority of refugees do have the protection of those articles and their removal would breach the Refugee Convention: for those appellants the ground of appeal is, essentially, the ground that the appellant is a refugee.

4. Section 83 has been the subject of decisions by the Tribunal in Abiyat and Others (rights of appeal) Iran [2011] UKUT 00314 (IAC), by the High Court in R (S, D & W) v First-tier Tribunal (IAC and SSHD) [2011] EWHC 627 (Admin) and R (Omondi) v SSHD [2009] EWHC 827 (Admin); and of the Court of Appeal in SSHD v AS (Somalia) [2011] EWCA Civ 1319. The submissions made to us in the course of the present appeal show that its meaning may still be regarded as not entirely clear.

The Facts

5. The appellant is a national of Myanmar. She applied in 2010 for entry clearance to the United Kingdom as a student. That application was granted, and she entered the United Kingdom on 29 March 2010, presenting her visa, which thereupon, under the provisions of Part II of the Immigration (Leave to Enter and Remain) Order 2000 (SI 1161/2000), took effect as leave to enter, granted before arrival, and valid until 31 July 2012.

6. On 25 October 2010 the appellant attended the respondent's screening unit in Croydon. She was given an appointment for 9 November 2011 and on that day formally claimed asylum. She was interviewed, and on 8 December 2011 her claim was refused. The letter refusing her claim specifically indicates that her existing leave is not being curtailed.

7. Some six weeks later, on 19 December 2011, the appellant sent a Notice of Appeal to the First-tier Tribunal. The notice alleged that the Secretary of State's decision refusing her Refugee status was an appealable decision, and set out grounds of appeal against it. The matter was set down for hearing, and at a hearing on 9 February 2012, Judge Brenells was referred to the decisions of the High Court and the Court of Appeal to which we have referred above. He decided that the appellant had no right of appeal. The appellant now appeals against that decision, with permission granted by the First-tier Tribunal. The Secretary of State maintains, as she has maintained from the beginning, that her decision of 8 December 2011 carries no right of appeal because it falls neither within s 82 nor within s 83 of the 2002 Act.

The Law

8. As we have indicated, rights of appeal arise only under the 2002 Act. The Court of Appeal has warned against methods of interpretation of the appeals provisions that do other than apply their clear language. In AS v SSHD, Sullivan LJ (with whom the other members of the court agreed) said, at [32]:

> "The court should be very slow to read words into such a detailed, self contained, statutory code."

9. The section with which we are concerned must, however, be seen in the context of the whole of that code. We do not need to set out all the appeals provisions of the 2002 Act, but we need to refer to two specific characteristics of them: certification, and the prohibition on removal.

10. Sections 94 and 96 of the 2002 Act allow the Secretary of State to restrict or remove rights of appeal by certification. For present purposes, the relevant provisions are that, under s 94, the Secretary of State can remove an in-country right of appeal by certifying that an asylum claim is clearly unfounded, and under s 96 can remove a right of appeal altogether by certifying that the matters which might be raised in it either have been, or could have been dealt with in an earlier appeal. Those provisions relate only to appeals against immigration decisions as defined by s 82: they do not apply to the rights of appeal given by ss 83 and 83A. Further, in the part of the Act dealing with detention and removal, s 78 provides that the Secretary of State, acting under the Immigration Acts, may not remove a person from the United Kingdom while his appeal under s 82 is pending. There is, again, no parallel provision for appeals under ss 83 or 83A.

11. Omondi concerned a national of Kenya, who, like the present appellant, had come to the United Kingdom as a student. He arrived in October 2002 with three years' leave to remain. He made an in-time application for further leave which was refused on 27 January 2006. His leave thus expired soon afterwards. He did not depart from the United Kingdom, and two years later, was arrested as an overstayer, upon which he claimed asylum. That claim was refused, and the claim was certified under s 94(2) with the result that any right of appeal could be exercised only outside the Untied Kingdom. The claimant sought judicial review of the refusal decision on the ground that (whether or not he had a right of appeal under s 82) he had one under s 83, because his immigration history clearly included the two aspects set out in s 83(1): his asylum claim had been rejected and he had been granted leave for a period exceeding one year, in fact for three years. The Deputy High Court Judge (a member of the Tribunal as constituted for the present appeal) held that the claimant had no right of appeal under s 83. He said this:

> "19. Like Blake J in Etame v SSHD and AIT [2008] EWHC 1140 (Admin) I have no difficulty in concluding that the defendant's arguments are to be preferred. Reading s.83 in the way contended for by Mr Drabble would produce an absurd and illogical result. It would be entirely illogical that a person who had made an unfounded asylum claim should have an in country right of appeal arising solely from what Blake J in Etame at [42] called the "irrelevant happenstance" of whether he had had an unrelated grant of leave in the past. I am fortified in that conclusion by a number of factors. First, the only rational basis upon which Mr Drabble has been able to suggest someone in this claimant's position should have the right of appeal is that having been in the United Kingdom in the past should be a cause for him being given special consideration in the appeals process. But I cannot accept that

argument. The right of appeal under s.83 is on Refugee Convention grounds only. If the purpose of the provision were to recognise the circumstances of a person who had been in the United Kingdom for some time, it would be absurd to exclude a human rights ground, as s.84(3) does. Secondly, the provisions of s.78 make it clear that launching an appeal under s.82 prevents removal. That benefit does not extend to appeals under s.83. In one sense, that is sufficient to deal with these proceedings anyway, because they appear to be based on the assumption that if the appellant has the right of appeal under s.83 and exercises that right, he cannot be removed while the appeal is pending. But that assumption does not appear to be right. If the appellant appealed under s.83, he could apparently nevertheless be removed from the United Kingdom. But the exclusion of s.83 from the provisions of s.78 is absurd if and only if Mr Drabble is right. If he is not right, a person appealing under s.83 *has* leave to remain in the United Kingdom and therefore does not need the protection of s.78.

20. The third reason is that s.85(1) has the clear intention of ensuring that all possible current appeals by an individual are dealt with by one appeal process. But s.85(1) again applies only to appeals under s.82. If Mr Drabble is right, the claimant has an appeal under s.83 and also an appeal under s.82, although, in the present case, the latter is exercisable only from abroad. If his s.83 appeal is unsuccessful, he can start new proceedings on an appeal under s.82. There is no suggestion that the statutory scheme envisages such a result. It is only because the claimant's asylum claim has been certified that he has no in-country right of appeal under s.82. If it had not been certified Mr Drabble's argument would entail separate rights under ss. 82 and 83, which would substantially reduce the obviously-intended effects of both ss. 85(1) (because there would still be two appeals) and 84(3) (because there would be no effective limit on the s. 83 grounds if a s.82 appeal was available alongside). This effect is avoided if ss.83 and 83A are understood as giving rights of appeal only in circumstances where no right of appeal exists under s.82. That understanding follows clearly from the wording of s.83A. It applies to s.83 if and only if the period of leave referred to in s.83(1)(b) is a period of leave granted in response to or after the asylum claim. As I have said, there is no right of appeal under s.82 against the grant of leave. The appellate structure makes sense only if the rights of appeal are mutually exclusive. They are mutually exclusive if the appeals under ss.83 and 83A arise only where the appellant has leave.

21. My conclusion is that the right of appeal under s.83 arises only in circumstances where the appellant has made an asylum claim which has been refused, and has been granted periods of leave exceeding one year in aggregate since the decision to refuse asylum. The claimant has no right of appeal under s.83, because his period of leave long pre-dates his asylum claim. His application for Judicial Review must therefore be dismissed."

12. S, D and W concerned three claims for judicial review, sharing a number of common features, identified by Beatson J at [3] as follows:

" 3. …The first is that an application for asylum was rejected and, at the same time, either no leave to remain or less than a year's leave to remain was granted. Secondly, at a later stage further representations were submitted and it was asserted

that a fresh asylum claim arose. Thirdly, after the submission of the further representations, the Secretary of State granted indefinite leave to the claimants to remain outside the Rules, but made no decision on the applications asserting the fresh asylum claim and stated that unless told otherwise within 14 days would treat them as withdrawn."

13. The Tribunal declined to entertain the claimant's appeals. Counsel for the Secretary of State argued that, in order for s 83 to apply, there had to be some connection between the refusal of asylum and the grant of leave: "it is a precondition to an appeal under s 83 that there is therefore a decision upon "the asylum claim that is before the Secretary of State"" (at [25]). That argument would have posed difficulties for the claimants in the instant case, because, although their earlier asylum claims had been refused, no decision had been taken on the later claims. A further aspect of the Secretary of State's argument in S, D and W was that, because the refusal of asylum had to be "related to the grant of leave": so a new claim for asylum essentially removed the effect of a previous refusal, for the purposes of s 83. In other words, a person who had been granted more than one year's leave could not rely on a refusal of asylum years ago, in order to invoke s 83.

14. Beatson J rejected the Secretary of State's arguments. He concluded that they were impossible to reconcile with the actual wording not only of s 83, but also of the Tribunal's Procedural Rules and the Immigration (Notices) Regulations. For present purposes we do not need to set out the reasoning but merely to state the conclusion, which was that all three texts clearly envisage the grant of leave taking place after the refusal, that is to say, at a time when there is no asylum claim "before the Secretary of State" and that the Act and the Rules specifically, and the Notices Regulations by implication, show that s 83 applies where a subsequent grant of leave is added to an initial grant of leave in order to make up the necessary period. That subsequent grant cannot be in response to the asylum claim, but clearly counts for the purposes of s 83.

15. Counsel for the Secretary of State had relied on Omondi, which, as a result, is discussed by the learned judge. At [64], the first sentence of paragraph [21] of Omondi is cited, apparently with approval, as supporting the conclusion that the Secretary of State's argument is to be rejected. Later, there is this:

16.

> "69. As to [Omondi] and Etame both involve very different fact situations. In [Omondi] the three years' leave as a student granted to the claimant had expired in 2005, three years before he made his claim for asylum in 2008 when apprehended as an overstayer. There was thus never a time when the claimant both had leave for over a year and had his asylum application rejected. His was an attempt to get round the certification process in section 96 by a person without leave at the material time. It is not surprising that the result is as it was.
>
> 70. As to Etame's case, a section 83 was not considered in it. It is a case concerned with section 82. It was not concerned with whether there was a right of appeal or not

under section 82, but whether the undoubted right of appeal that existed, was to an "in-country" appeal, i.e. the case was concerned with the issue of venue."

17. In response to submissions about the possibility of repetitious appeals, the judge said this:

> "81. I turn to the position in D and W's cases. In their cases it was also submitted by Mr Mandalia that there is no rational basis upon which it could be said that a person should be able to exercise a further right of appeal under section 83 against the refusal of a previous claim against which the claimant has exercised a right to appeal and received its determination. However, it is significant that whereas there is provision to preclude appeals under section 82 which are purely repetitious or which advance grounds that should have been raised in the past in section 96 of the 2002 Act, there is no similar provision in respect of appeals under section 83.
>
> 82. There is a particular need to prevent repetitious appeals under section 82 because they have the potential to frustrate removal of an individual while he pursues multiple appeals which are unlikely to be meritorious. I accept Mr McKenzie's submission that the same concerns do not apply to section 83 appeals where the appellant is by definition not liable to be removed from the United Kingdom and has no interest in spinning out the process."

18. The result was that all three claimants obtained judicial review. The Secretary of State appealed to the Court of Appeal. By then, both S's and D's cases had become academic, but the Court needed to consider S's case as well as W's in order to reach its conclusions. The proceedings before Beatson J are summarised in the judgement of Sullivan LJ (with whom Davis LJ and Maurice Kay LJ agreed) as follows:-

> "16. Before Beatson J it was submitted by Counsel who then appeared on behalf of the Secretary of State (not Mr. Payne) that there had to be a nexus between the grant of leave to enter or remain for a period of one year or more (para. (b) in subsection 83(1)) and the rejection of the asylum claim (para. (a) of subsection (1)). Thus, AS could not rely on the rejection of his asylum claim on 15th November 2006 because there was no nexus between that rejection and the grant of ILR some three years later: see para. 57 of Beatson J's judgment. Nor could AS rely upon his claim to be a refugee in February 2007, when applying to extend his discretionary leave, because the Secretary of State had not reached any decision upon that claim. It was "a refugee in February 2007, when applying to extend his discretionary leave, because the Secretary of State had not reached any decision upon that claim. It was "a precondition to an appeal under section 83 that there is …… a decision upon the asylum claim that is before the Secretary of State": see paragraph 52 of the judgement.
>
> 17. Beatson J rejected the submission that there had to be a nexus between the rejection of the claim for asylum and the grant of leave to enter or remain for one year or more (in AS's case the grant of ILR). That submission was not pursued by Mr. Payne. He was right not to do so. As Beatson J pointed out in paragraph 58 of his judgment, section 83(1)(b) refers not only to a period exceeding one year, but to "periods exceeding one year in aggregate." It follows that the grant of leave which

> causes the period of leave to exceed one year in aggregate need not to be contemporaneous with the rejection of the person's asylum claim, and the reason for the subsequent grant of leave which causes the period of leave to exceed one year in aggregate may be wholly unrelated to the rejection of the asylum claim. "

19. Before the Court of Appeal, the Secretary of State submitted that W was not entitled to appeal under s 83 because the rejection of his earlier asylum claim was "in the context of an immigration decision against which there was a right of appeal under s 82", and that "it could not have been Parliament's intention to provide for a second right of appeal" (at [24] and [31]). The Court of Appeal rejected that argument. Sullivan LJ pointed out that the appeal under s 82 was an appeal against the immigration decision, albeit mounted on asylum grounds, whereas the appeal under s 83 was specifically against the refusal of asylum. There was therefore no duplication of appeal apparent on the words of the statute, and there was no clear warrant to read in such words as the Secretary of State's argument would require. Besides, an unmeritorious appeal under s82 could be certified:

> "38. There is undoubtedly a problem of spurious and/or repetitious claims for asylum in the context of appeals under section 82. Sections 94 and 96 enable the Secretary of State to respond to that problem and they do not, as Mr. Payne pointed out, apply to appeals under section 83. Thus he submitted that the Secretary of State will not be able to prevent manifestly unfounded and/or repetitious appeals under section 83. Again, the potential problem is overstated. Appellants under section 82 are, in practice, seeking to prevent their removal from the UK (see the list of immigration decisions in subsection 82(2)). It is understandable, if regrettable, that such Appellants will make every endeavour, however hopeless, to avoid or postpone their removal. By contrast, those entitled to appeal under section 83 will, by definition, have been given leave to remain in the UK for a least a year, and will know that if that leave is not extended they will be entitled to an appeal under section 82. While there are advantages in obtaining refugee status in terms of access to employment, housing and welfare benefits, the ability to travel and to bring family members to the UK (see paras. 9 and 10 of Saad), a wish to obtain such advantages under section 83 should not be equated with a determination to remain in the UK at all costs under section 82: see paragraph 82 of the judgement of Beatson J."

20. If there was no certification, or no basis for certification, an appeal that was unmeritoriously repetitive would be likely to fail under the guidelines set out in Devaseelan [2002] UKIAT 00702, [2003] Imm AR 1: "a person whose claim for asylum has been rejected in the context of a s82 immigration decision against which he has unsuccessfully appealed will be told if he seeks legal advice and/or public funding that he will fair no better in a subsequent appeal under s 83 unless he can persuade the Tribunal that there is some good reason to depart from the earlier decision". The Court does not cite Omondi and there does not appear to us to be any specific discussion of the possibility of a decision raising rights of appeal under ss 82 and 83 at the same time.

Discussion

21. Mr O'Callaghan's submissions to us were clear and concise. They were that in paragraph 17 of the judgement of Sullivan LJ, the Court of Appeal had approved Beatson J's view that s 83 imposed no requirement of a connection between the refusal of asylum and the grant of leave. Beatson J had disapproved Omondi and the Court of Appeal had decisively overruled it. "It therefore follows," he submitted in his written skeleton, "there being no nexus between the rejection of an asylum claim and the grant of leave to remain, that the grant of leave could be granted prior to the rejection of the asylum claim". The judge of the First-tier Tribunal was wrong to rely on Omondi, a decision of the High Court that had been overruled by the Court of Appeal and, finally, "the Court of Appeal clearly had the judgment of Omondi in mind" because it had been considered by Beatson J.

22. Mr Hopkins' submission was that the grant of leave had to be subsequent to the refusal of asylum. He indicated that he thought the conclusion that there need be no nexus between the refusal and the grant of leave was simply wrong.

23. There was a striking difference between the facts of Omondi and the facts of S, D and W. In Omondi the grant of leave was made at a time when the claimant had never claimed asylum. The sequence of events was first, grant of leave; secondly, expiry of the leave; thirdly, claim for asylum; fourthly, refusal of asylum claim. In S, D and W, the sequence of events was as follows: First, asylum claim; secondly, refusal of asylum claim; thirdly, grant of leave exceeding one year. The facts of the present appeal are different from both but are closer to those of Omondi: the sequence is first, grant of leave of more than one year; secondly, claim for asylum; thirdly, refusal of claim. The difference from Omondi is that at the time of the refusal, the appellant still had leave.

24. Mr O'Callaghan's submission asks us to treat the difference in sequence of events between Omondi and S, D and W as of no significance in the context of the interpretation of s 83. He makes that submission on the basis that it must now be regarded as decided that there does not need to be a connection between the claim for asylum and its refusal on the one hand, and the grant of leave on the other. To say that there does not need to be a connection between the events is in our judgment not the same as saying that the order of the events is irrelevant. On the contrary, it appears to us that both Beatson J and Sullivan LJ had clearly in mind that the order of events needed to be that exemplified in S, D and W, for s 83 to apply. At paragraph 64 of his judgement, Beatson J cites a sentence from Omondi. Mr O'Callaghan submitted that Beatson J goes on to disapprove of the view there expressed, but we think it is difficult to read the judgement in that way: it is cited in order to support the conclusion that Beatson J was reaching. The sentence is:

> "The right of appeal under section 83 arises only in circumstances where the appellant has made an asylum claim which has been refused and has been granted

periods of leave exceeding one year in aggregate *since the decision to refuse asylum*" (our emphasis).

25. Later in his judgement, at [82], Beatson J specifically accepts the submission of counsel for the claimants before him that in s 83 appeals "the appellant is by definition not liable to be removed from the United Kingdom and has no interest in spinning out the process". That is a reference to a s 83 appellant having existing leave, which is seen by the judge as a reason for the lack of provision for certification for s 83 appeals. In our judgement, although Beatson J clearly decided that there does not need to be any connection between the refusal of asylum and the grant of leave, it is inherent in s 83 that the grant of leave follows the refusal, and that (as a result of the grant) the appellant has leave at the time of his s 83 appeal. The latter point is also explicit in the reasoning of Sullivan LJ in his judgement in the Court of Appeal at [38]: "Those entitled to appeal under s83 will, by definition, have been given leave to remain in the UK for at least a year, and will know that if that leave is not extended they will be entitled to an appeal under s 82". Nothing that we can see in his lordship's judgement gives us any reason to suppose that he thought that an appeal under s83 would lie on the facts of Omondi.

26. We therefore do not accept that Omondi was disapproved by Beatson J or overruled by the Court of Appeal in S, D and W. Its requirement that the refusal of asylum precede the grant of leave was, on the contrary, at both levels assumed to be correct.

27. For that reason it may be appropriate to recall and review the reasons said by the Deputy Judge to fortify his conclusion. The first was that if a person such as Omondi had a right of appeal, it was difficult to see why it should be restricted to refugee grounds. That reason may, we think, need reconsideration in the light of Sullivan LJ's reminder that the appeal under s 83 is specifically against the refusal of asylum. The second reason was that s 78 provides no security against removal for a person who appeals under s 83. That, as it appears to us, is still a good reason for supposing that the appeal under s 83 is necessarily by a person who has leave at the date of the appeal. The third reason is that in Omondi's case there was a right of appeal under s 82 (albeit certified) and that the statue would not have intended to provide for appeals under s 82 and s 83 against the same decision. That reason may also need reconsideration in the light of the decision of the Court of Appeal in AS.

28. It does seem to us, however, that, for the reasons given in Omondi and at both levels in AS, s 83 envisages that the grant of leave be current at the date when the appeal is raised. That is the case in the present appeal. The question is whether the specific decision in Omondi, that the grant of leave must postdate the asylum claim or refusal, is also good law.

29. We have indicated above the reasons for considering that both Beatson J and the Court of Appeal assumed that it was. It does not appear to us that anything said by either is sufficient to undermine that view. The notion that an appeal under s 83 arises in circumstances where an asylum claimant happens to have had (or to have) a

previous grant of leave still appears inexplicable. It is also inexplicable that the statute should envisage that if an asylum claim is made by a person who has existing leave of over one year, it cannot be certified, however repetitious or clearly unfounded it may be, which would be the case if the refusal of the claim carried a right of appeal under s 83 in those circumstances.

30. The crucial difference between Omondi and S, D and W is not merely in the sequence of events: it is that, at the time of granting leave, the Secretary of State knew that S, D and W claimed to be refugees. The grant of leave otherwise than as a refugee was itself in part a rejection (if not a formal refusal) of their refugee claims. If, following the claim that the present appellant has now unsuccessfully made, the Secretary of State grants her further leave amounting to more than a year, that grant will have been made to a person whose claims were known to the Secretary of State, and will carry a right of appeal under s 83. If she is refused leave, and becomes liable to removal, there is bound to be, at some stage, an immigration decision against which she can appeal under s 82. But in the meantime it is not at all obvious that any injustice to her is caused by continuing to treat her as a person enjoying the remainder of the leave she sought and was granted as a student.

31. Our conclusions are that the decision in Omondi that, for s 83 to apply, the grant of leave must post-date the refusal of asylum, is neither overruled in AS nor shown to be wrong by the judgements in that case at either level. Immigration Judge Brenells was therefore correct to apply it and made no error of law in his conclusion that the appellant had no right of appeal. This appeal to the Upper Tribunal is therefore dismissed.

C M G OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 26 September 2012