



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/02568/2013

THE IMMIGRATION ACTS

Heard at Field House
On 14th August 2013

Determination Promulgated
On 16th August 2013
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Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR KAIF AQEEL

Claimant

and

SECRETARY OF STATE

Respondent

Representation:

For the Claimant: Not Represented
For the Respondent: Ms J Isherwood (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant against a determination of the First-tier Tribunal (Judge Somal) who by a determination promulgated on 5th June 2013 dismissed the Appellant's appeal against the Secretary of State's decision to refuse to vary his leave as a Tier 4 (General) Student Migrant and to remove him under s.47 of the Immigration, Nationality and Asylum Act 2006.

2. When granting permission to appeal First-tier Tribunal Judge Frankish did not deal with the question of timeliness as he was required to do. The time for seeking permission to appeal expired on 14th June but the application was not received by the Tribunal until 2nd July.
3. In Samir (First-tier Tribunal permission to appeal :time) [2013] UKUT 00003 (IAC) it was made clear that in such circumstances the grant of permission is a conditional grant and that I as a First-tier Tribunal Judge must first decide whether to admit the application.
4. The application explains that the Appellant is paying privately for the appeal proceedings and took time to raise funds and as soon as he did so the representatives submitted the application. As the First-tier Tribunal determination does not deal with the s.47 removal decision it is arguable the First-tier Tribunal erred and so I admit the application.
5. The Appellant's representative did not attend the hearing, but the Appellant did. At 10.15 the Tribunal received a telephone call from Malik Law Chambers to the effect that he representative was ill and could not attend and asking for an adjournment. A letter to the same effect was faxed later in the day. As the Appellant was present and the grounds had been drafted by his representatives I saw no reason to adjourn dealing with the error of law.
6. The grounds are clearly a set piece – used in several cases - indeed I have an identical set in another case before me to-day. They assert that the Judge erred in failing to deal with s.47 which case law (Adamally and Jaferi (section 47 removal decisions: Tribunal Procedures) [2012] UKUT 00414 (IAC) confirms was an unlawful decision when made at the same time as a refusal to vary leave and that the two are distinct decisions each requiring a determination. Ahmadi [2013] EWCA Civ 512 indicates that where an unlawful s.47 removal decision has been made the appeal in that regard should be allowed.
7. In this case the First-tier Tribunal did not make any decision on the removal decision. The Secretary of State in her Rule 24 reply suggests that the Home Office Presenting Officer withdrew the decision on the day in line with current policy. The Record of Proceedings makes clear that is what occurred. It is astonishing that the same representatives, Malik Law Chambers, who were present at that hearing should then submit that as a ground of appeal. They were well aware that the s.47 decision had been withdrawn and was thus not before the First-tier Tribunal.
8. The grounds also assert that the Judge erred in failing to deal with Article 8. The determination makes clear at paragraph 4 that the representative did not rely on Article 8. The Record of Proceedings also records the representative saying that he was not relying on Article 8. Again it is therefore astonishing that the same representatives who made that concession should now suggest that the Judge erred in failing to deal with it. A Judge is entitled to assume that a representative knows what he is doing and if he says he is not relying on Article 8 it is because he does not

want findings to be made in that regard. In seeking and securing the conditional grant of permission to appeal the representatives have misled the First-tier Tribunal Judge.

9. The grounds are wholly without merit, bear no resemblance to the case in issue and ought not to have been submitted. Both the Tribunal's time and the Appellant's money have been wasted. This case had no prospect of success whatsoever and the Appellant ought properly to have been advised accordingly.
10. The First-tier Tribunal made no error of law in its determination and the appeal to the Upper Tribunal is dismissed.

Signed

Date 14th August 2013

Upper Tribunal Judge Martin