Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/28654/2012

THE IMMIGRATION ACTS

Heard at Field House
On 1 November 2013

Oral Determination
Promulgated
On 14 November 2013

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

MISS PRIYADARSHINI PRADIPKUMAR KAWAIYA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance or representation
For the Respondent: Ms E Isherwood, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of India and provides her date of birth as 14 April 1984. She appeals against the determination of First-tier Tribunal Judge Prickett promulgated on 4 March 2013 following a determination decided upon the papers in which the

judge dismissed the appeal of the appellant against the decision of the Secretary of State to refuse her application made on 17 April 2012 for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under the points-based system and for a biometric residence permit. The application was refused by the respondent in a decision made on 19 October 2012.

2. At the hearing before me neither the appellant nor a representative attended. Accordingly I have decided the appeal without the assistance of either. The situation arises in this way.

3. The decision made by the Secretary of State was a decision which included making a decision to issue a Section 47 decision. It is now accepted by the Secretary of State that the making of a decision under Section 47 was unlawful when made at the same time as the decision to vary the appellant's leave. Accordingly, and quite properly, the Secretary of State wrote a letter dated 28 August 2013 in which this point was conceded:

> "Given that the appellant accepts that she could not meet the requirements of the Immigration Rules an application will be made at the error in law hearing for permission to withdraw as per Home Office policy the Section 47 decision so that there will be no appeal before the Tribunal. A removal decision will subsequently be made granting a right, potentially limited, to the appellant which she will be able to exercise if she chooses."

Accordingly, there is no issue that the Secretary of State had properly responded to the combined effect of the cases of *Ahmadi* [2013] EWCA Civ 512 and *Adamally & Jaferi* [2012] UK 244 to the effect that a Section 47 decision cannot arise until the applicant has already received a notice of variation decision. Accordingly, that element of the appeal is no longer in issue.

4. The second issue related to Article 8 and it is said that the appellant should be allowed to make Article 8 representations. The difficulty that is faced with this application is that there is no material upon which either I or the Immigration Judge could make a decision that the appellant's removal would violate her Article 8 rights. She was granted leave to enter the United Kingdom on 4 September 2009 as a Tier 4 (General) Student until 17 April 2012. During the period of extant leave she made a combined application for leave to remain. The basis upon which she had originally been granted leave was as a student. It follows from this that there was implied within the grant of leave that she would meet the requirements of her student status and if, at the expiration of her student status, she had not satisfied the requirements for further leave to remain, she would leave the United Kingdom. There could therefore have been no expectation, legitimate or otherwise, that she would be entitled to remain beyond the period of her student leave. Such private life as she may have developed (doubtless she would have done so during the relatively short period of her student leave between 4 September 2009 and 17 April 2012) was predicated upon the fact that she would be leaving the country at the conclusion of her studies unless she met the requirements of the Immigration Rules for further

leave to remain. She has not met those requirements and accordingly there could be no basis upon which she had any expectation for further leave or that her private life so developed would be violated were she to be required to leave. No material has been placed before me to indicate that in this period she has developed a private life which should be protected from removal and in those circumstances there is nothing in the Article 8 claim.

5. The appeal also fails because it is not challenged that the appellant did not meet the requirements of leave to remain under the Rules.

DECISION

1. The s47 removal decision is unlawful.

2. Save as to paragraph 1 of the decision, the Judge made no error on a point of law and the determination of the appeal by the First-tier Tribunal Judge shall stand.

ANDREW JORDAN
UPPER TRIBUNAL JUDGE