



IAC-TH-CP-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/03092/2014

THE IMMIGRATION ACTS

Heard at Field House

On 4th November 2014

**Determination
Promulgated**

On 20th November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

MR DHAVALKUMAR LALJIBHAI KUMBHANI

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr N Bramble (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant's appeal against decisions to refuse to vary his leave and to remove him from the United Kingdom by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006 was dismissed by First-tier Tribunal Judge Woolley ("the judge") in a determination promulgated on 13th August 2014. The appellant entered the United Kingdom in September 2009 as a Tier 4 Student and further leave was granted as a Tier 1 (Post-Study) Migrant, valid until 15th September 2013. Two days before expiry of his leave, the appellant applied for leave to remain outside of the rules.

2. In his notice of appeal to the First-tier Tribunal, the appellant requested an oral hearing but subsequently asked for the matter to be dealt with “on the papers”. The judge determined the appeal on the basis of the documentary evidence before her. She took into account bundles produced by the parties. The Secretary of State found that the appellant could not meet the requirements of paragraph 276ADE of the rules. The judge concluded that the evidence before her contained nothing of any substantial detail regarding private life ties established by the appellant since his arrival here. She found that he had not lost ties with his country of nationality, India and that his passport showed that he returned to that country in 2011, 2012 and 2013. She found that the case advanced on his behalf under paragraph 276ADE(ii), that he had no ties in India, was not made out. The judge took into account a statement from the appellant in which mention is made of a child, apparently his, who was one month old when the statement was made in February 2014. The appellant mentioned friends and family in this country in his statement but the judge found that there was no supporting evidence in this context. According to the application form completed when he sought further leave, his parents and siblings remain in India.
3. The judge concluded that the requirements of the rules were not met and that the appellant’s case disclosed no exceptional or compassionate circumstances.
4. The appellant applied for permission to appeal, which was granted on 29th September 2014. The judge granting permission noted dicta in MM [2014] EWCA Civ 985 and found that it was arguable that the judge ought to have given full consideration to the appellant’s Article 8 case, outside the rules. The same judge observed that it was not easy to envisage any Tribunal concluding that the respondent’s decisions were disproportionate, even if a full Article 8 assessment were made.

Submissions on Error of Law

5. The appeal was listed for hearing at 2pm. By 2.30pm on 4th November 2014, it had become apparent that the appellant was not present at Field House and neither were his solicitors. I made enquiries through my clerk, who telephoned the appellant’s solicitors on the number provided by them. Attempts to make contact were unsuccessful, an automated message being the only response to calls. No messages had been left for the Upper Tribunal and no adjournment sought. The case management file revealed that notice of the hearing had been properly sent to both the appellant and his solicitors.
6. Mr Bramble said that the judge had not erred in law and even if she had, any error was plainly not material. The determination showed that she had regard to the appellant’s bundle of documents and she referred to items contained within it. On the evidence before her, there was simply

no substantial Article 8 case advanced at all. The appellant mentioned a child in his second statement, as recorded by the judge in paragraph 8 of the determination. The evidence did not, however, include a birth certificate or anything of substance about a partner. Even if, in the light of MM, the judge ought to have expressly assessed the case outside the rules, there was no material error. The judge plainly considered all the factors the appellant relied upon and she was entitled to conclude that there was no reason to look outside the rules.

Conclusion on Error of Law

7. I accept in full Mr Bramble's submissions. The determination has been prepared by a very experienced judge and shows that she made a careful assessment of the documentary evidence before her, in the light of the appellant's indication through his solicitors that he did not require a hearing. It is readily apparent that the judge was fully aware of all the salient features of the appellant's case. Notable was the very brief mention of a child, in his second witness statement. There was a paucity of supporting evidence regarding this aspect of the case and, more generally, regarding the substance of the ties the appellant claimed to have established in this country. As the judge found, he has had only limited leave throughout and any ties will have been made in the absence of any reasonable expectation that he would be able to remain here in the absence of qualification under the rules. The judge was entitled to find that the appellant has not lost ties to the country of his nationality, as the presence there of his parents and siblings and his several returns to India reveal.
8. Overall, I conclude that the judge was entitled to find that an assessment of the appellant's position under the rules fully engaged with all the relevant aspects of his case in the Article 8 context. She did not err in concluding that there was no reason to look outside the rules. Even if she did err, however, in this respect, and even if express consideration was required of the appellant's Article 8 case outside the rules, her error was plainly not material. The evidence before the judge showed that the appellant had very little of real substance to put in the balance against the Secretary of State's case that his application for leave fell to be refused and that he should be removed to India.

DECISION

The decision of the First-tier Tribunal contains no material error of law and shall stand.

Signed

Date **19th November 2014**

Deputy Upper Tribunal Judge R C Campbell

