



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/43961/2013

Appeal Numbers:

THE IMMIGRATION ACTS

Heard at Field House

On 2nd July 2014

**Determination
Promulgated**

On 11th July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between:

ATIF HUSSAIN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R K Rai, instructed by Deccan Prime Solicitors
For the Respondent: Ms A Holmes, Senior Home Office Presenting
Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Pakistan born on 24th April 1998. He appeals against the determination of the First-tier Tribunal dated 2nd January 2014 dismissing his appeal against the Respondent's decision of 14th October 2013 refusing further leave to remain under Appendix FM and the decision to remove him to Pakistan under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. Permission to appeal was granted by First-tier Tribunal Judge Heynes on 2nd April 2014 on the grounds that the Judge was under the impression that the Appellant was seeking leave as a student which was not in fact the case. It was not arguable that the decision to refuse to grant an adjournment amounted to an error of law.
3. Although permission was expressly refused on the ground that the Judge had erred in law in not granting the adjournment, Mr Rai submitted that the Judge had acted unfairly and permission should be granted on that ground. The Appellant's partner, Mr Kabir, had attended the Tribunal to supply medical evidence. It was wrong for the Judge to proceed with the appeal in the Appellant's absence when Mr Kabir had only attended to support the application for the adjournment and nothing more. He was forced to give evidence and the Appellant had not had a fair hearing.
4. Ms Holmes submitted that the Judge's refusal to grant an adjournment was not unfair in the circumstances. The adjournment request had been refused on paper and no additional evidence had been supplied to support the renewed application. There was no good reason for the Appellant's and his solicitor's non-attendance.
5. It was accepted by the parties that the Judge had not misunderstood the nature of the application (paragraphs 18 and 19). It was accepted that the Appellant could not meet the Rules and the application was made on the basis that the Respondent considered the position to grant leave to remain outside the Rules. The Judge considered the appeal under Article 8.
6. I am of the view that I cannot re-open the grant of permission. First-tier Tribunal Judge Heynes specifically refused permission on the basis that the refusal to adjourn the appeal did not amount to an error of law.
7. In an event, the test to be applied is whether it was unfair in the circumstances. First-tier Tribunal Judge Fox found that there was no evidence to show that the Appellant could not attend the appeal hearing. The medical evidence produced related to a back injury for which the Appellant was not receiving treatment, although he was unfit for work. The Judge had not acted unfairly in concluding that it was just and equitable to proceed with the hearing. The Appellant and his solicitors had ignored the standard directions and there was no good reason for their non-attendance.
8. The Judge made no error on any point of law which might require the determination to be set aside. The appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal dated 6th January shall stand.

Deputy Upper Tribunal Judge Frances
10th July 2014