



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

Appeal Number: IA/11947/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28 January 2015**

**Decision & Reasons  
Promulgated  
On 6 February 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

**Between**

**MR RAJAN KHANAL  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Ms A Everett, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant's appeal against decisions to refuse to vary his leave and to remove him from the United Kingdom was dismissed by First-tier Tribunal Judge Blum ("the judge") in a determination promulgated on 30 October 2014. There was no attendance by the appellant or by his representatives. The day before the hearing, a fax was received from the appellant requesting an adjournment. He claimed that he was feeling unwell and suffering from a bad cold and chest pain. There was nothing

from his representatives. A clerk at the hearing centre noted that the appellant had not provided a contact telephone number.

2. No adjournment was granted and the judge recorded that neither the appellant nor his representatives received anything from the Tribunal indicating that an adjournment would be granted. On the morning of the hearing, the judge asked his usher to contact the appellant and the representatives. Contact could not be established with the appellant himself, as he provided no number and telephone calls to his solicitors produced only a "voicemail" response. The judge put the matter back until he had heard the other cases in his list and asked his usher to contact the representatives again, at about midday, and to leave a message indicating that they were to contact the Tribunal about the appeal. There was no response.
3. The judge proceeded to determine the appeal. In September 2013, the appellant applied for leave to remain as a Tier 4 (General) Migrant. The Secretary of State found that he was not entitled to the points claimed in the maintenance (funds) category as he had provided a false bank statement in support of his application. The application was refused, the Secretary of State concluding that the ground of refusal under paragraph 322(1A) of the rules was made out. The judge took into account the appellant's reliance upon Article 8 of the Human Rights Convention and the claims made by him and by his claimed partner that they were in a relationship together. Noting the absence of the claimed partner, although it appears that she did attend an earlier hearing, the judge observed that as the appellant's core claim was that he was living with her, and as the appellant was aware of the hearing, his partner would almost certainly also have been aware of it. No bundle of evidence was made available by or on behalf of the appellant. The claim that he was not feeling well was unsupported by any medical evidence but, in any event, the judge would have expected the appellant's representative to attend.
4. The judge concluded that the use of a false bank statement, which the appellant admitted, was fatal to his Tier 4 application. So far as Article 8 was concerned, there was a paucity of evidence before the Tribunal and nothing to show that the couple could not relocate to Nepal to continue their relationship, if it were genuine. The relationship was entered into at a time when the appellant only had limited leave to remain in the United Kingdom and his immigration history included the use of a false document. In those circumstances, the judge concluded that the adverse decisions did not breach the appellant's Article 8 rights or those of anyone else.
5. The appellant applied for permission to appeal. In his application, he again failed to provide a contact telephone number. In his grounds, he restated his claim that on the day of the hearing he felt unwell and was anxious. He was no longer represented by solicitors and stated that he did not realise that he needed to attend the Tribunal to ask for an adjournment. He tried to get evidence showing that he had been to see

his GP on the day but was told that he could not be given anything on the spot. He attached a compliment slip in the name of Berkshire West NHS Trust, on which were written these words: "To Whom it may Concern, I can confirm Mr Rajan Khanal visited us on 23 October 2014. Unfortunately we cannot book an appointment early enough for a certificate for one day." There is a signature (which is unclear) but no description of the signatory's role at the Trust.

6. Permission to appeal was granted on 16 December 2014. In a Rule 24 response, the Secretary of State opposed the appeal on the basis that the judge directed himself appropriately. There was no adequate evidence that the appellant was ill or that he could not attend the Tribunal. He had no expectation that an adjournment would be granted and it was entirely open to the judge to proceed. On the facts, the appellant had used deception and could not meet the requirements of the rules.

### **Submission on error of law**

7. There was no appearance by the appellant at the hearing on 28 January 2015. As noted above, he provided no contact telephone number in his application for permission to appeal. He had the benefit of legal advice and assistance from a firm of solicitors earlier in the proceedings but it appears clear that they were no longer acting by the date of the First-tier Tribunal hearing in October 2014. There was nothing on file indicating when they came off the record. My usher made enquiries at 10:25am and confirmed that the appellant was not present at Field House and that no messages had been received from him or anyone on his behalf. I could see from the court file that the notice of hearing was sent to the appellant at the address he provided in his application for permission to appeal (which was the same address as the one given earlier in the proceedings).
8. Ms Everett relied upon the Rule 24 response. There was nothing in the judge's reasoning on the adjournment, at paragraphs 5 to 7 of the written decision, that showed any error. It was difficult to see how the judge could have come to a different decision on the facts as they were.

### **Conclusion on error of law**

9. I conclude that no material error of law has been shown. As the First-tier Tribunal Judge noted, the application made by the appellant for an adjournment was received very late in the day (the day before the hearing) and was entirely unsupported by evidence. He had no expectation that an adjournment would be granted. There was nothing to show that his solicitors had come off the record. Attempts were made on the day of the First-tier Tribunal hearing to establish contact with the appellant and the representatives, without success. The claimed partner he relied upon in the Article 8 context also failed to attend the hearing.

10. The appellant also failed to attend his hearing in the Upper Tribunal. The only additional evidence which has emerged is the compliments slip from the West Berkshire NHS Trust but this falls woefully short of showing that the appellant was suffering ill-health on 23 October 2014, let alone ill-health which would have prevented him from attending court. He admitted using a false bank statement, with the inevitable result that his application for leave to remain under the rules failed. The judge did not err in declining to adjourn the case, in all the circumstances, and no procedural unfairness resulted. Nor did the judge err in dismissing the appeal. The requirements of the rules were simply not met and the Secretary of State was entitled to find that the ground of refusal under paragraph 322(1A) was made out. So far as Article 8 of the Human Rights Convention is concerned, the judge's succinct analysis was clearly open to him in the light of the very limited evidence before him. No error of law has been shown in this context.
11. The decision of the First-tier Tribunal contains no material error of law and shall stand.

### **DECISION**

12. The decision of the First-tier Tribunal shall stand.

Signed:

Dated: **5 February 2015**

Deputy Upper Tribunal Judge R C Campbell

### **ANONYMITY**

There has been no application for anonymity and I make no direction or order.

Signed:

Dated: **5 February 2015**

Deputy Upper Tribunal Judge R C Campbell