



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

Appeal Number: IA/08125/2013

**THE IMMIGRATION ACTS**

**No hearing  
11 October 2013**

**Promulgated on  
14 October 2013**

**Before**

**Mr C M G Ockelton, Vice President**

**Between**

**JIT MOHAN**

**and**

Appellant

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

Respondent

**DECISION AND REMITTAL**

1. The appellant, a national of India, appealed to the First-tier Tribunal against the decision of the respondent on 26 February 2013 refusing to grant him leave to remain on the basis of fourteen years' residence. Judge Doyle dismissed his appeal. The appellant now has leave to appeal to this Tribunal.
2. The judge dismissed the appeal on the ground that the appellant's entry to the United Kingdom, allegedly in 1997, was admittedly unlawful. He regarded that as determinative and found no other relevant facts. But in a case such as this, based on over fourteen years' residence, the legality of presence here is not a determining factor. It is thus clear that the judge

erred in law, and it is not easy to see that the error can be cured on the basis of his determination.

3. On 12 September 2013 I wrote to the parties' representatives as follows:-

"For the reasons given in the grant of permission to appeal to the Upper Tribunal in this case it is clear that the decision of the First-tier Tribunal is based on an error of law and cannot stand. The Secretary of State has indicated, by letter dated 21 August 2013, that that is so.

The Secretary of State does not specifically consent to remittal to the First-tier Tribunal but this was a case in which the judge also refused to allow a substantial amount of evidence to be tendered on the ground that it was late. In the circumstances it seems to me that a fresh hearing before the First-tier Tribunal is desirable.

I therefore propose to set aside the determination of Judge Doyle and remit the appellant's appeal for determination by a different judge in the First-tier Tribunal. Any proposals to the contrary will be considered **within 14 days** of the date of this letter."

4. No reply has been received. I now set aside the determination of Judge Doyle and remit the appellant's appeal for determination by a judge of the First-tier Tribunal other than Judge Doyle.

TRIBUNAL

C M G OCKELTON  
VICE PRESIDENT OF THE UPPER

IMMIGRATION AND ASYLUM CHAMBER  
Date: 11 October 2013