



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/08465/2013

THE IMMIGRATION ACTS

Determined at Field House without a hearing
On 5 November 2013

Determination Promulgated
On 11 November 2013

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MUHAMMAD SHAHID
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant appeals with permission against the determination of the First-tier Tribunal Judge Ferguson promulgated on 26 August 2013 dismissing his appeal against the decision of the respondent made on 1 March 2013 to refuse to vary his leave to remain and to make removal directions pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006. I granted permission to appeal to the Upper Tribunal on 16 October 2013 on limited grounds:-

The renewed grounds of appeal, which incorporate the initial grounds, are without merit. It is accepted that the appellant does not come with the provisions of the immigration rules and it is not arguable that the First-tier Tribunal erred with respect to the decision in Hayat [2011] UKUT 444, given that decision was reversed by the Court of Appeal.

It is not properly arguable that the judge erred in concluding that the requirements of the immigration rules were not met, nor is it arguable, given the decision in MF (Nigeria) [2013] EWCA Civ 1191, approving the decision of Sales J in Nagre [2013] EWHC 720, that the judge erred in his approach to article 8; the references to the appellant's potential earnings and actual earnings [5] are not arguably relevant.

It is, however, arguable that the Judge erred in failing to address the appeal against the decision of the respondent to remove the appellant by way of directions under section 47 of the immigration, Asylum and Nationality Act 2006 and I grant permission on that limited ground.

It is my provisional view, in the light of the decision in **Adamally and Jaferi** [2012] UKUT 00414, that the determination of the Judge Ferguson did involve the making of an error of law in failing to address the appeal against the section 47 decision. It is also my view that accordingly, the appeal should be allowed to the extent that that part of the determination is set aside and remade, allowing the appeal against the section 47 decision on the basis that it was not in accordance with the law.

It is proposed to take such a course of action without any further hearing unless the Upper Tribunal receives by 4pm on 1 November 2013 detailed and cogent written submissions to the contrary.

2. There has been no response from the appellant and the respondent has consented to the proposed course of action. In the circumstances, I am satisfied that, for the reasons set out above, that the determination of the First-tier Tribunal did involve the making of an error of law in that the judge failed to address the section 47 decision, and that part of his determination requires to be remade. I therefore remake that part of his decision, allowing the appeal against the section 47 decision on the basis that it was not in accordance with the law.

Summary of conclusions

1. The decision of the First-tier Tribunal did involve the making of an error of law that part of the decision relating to the section 47 removal decision and I set that part aside.
2. I remake the decision by allowing the appeal against the section 47 removal on the basis that it was not in accordance with the law.
3. I uphold the remainder of the decision.

Signed

Date: 5 November 2013



Upper Tribunal Judge Rintoul