Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/17757/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 29 July 2013	**On 7 August 2013**
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Before

UPPER TRIBUNAL JUDGE DAWSON

Between

GURJIT SINGH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Miss Pal, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of India where he was born on 5 August 1992. He has been granted permission to appeal against the decision of First-tier Tribunal Judge

Pirotta who, for reasons given in a determination dated 11 December 2012, dismissed his appeal against a combined decision by the Secretary of State refusing his Tier 4 application for further leave to remain and their decision to remove the appellant.

2. The judge decided the case without a hearing (at the request of the appellant's representatives) and concluded that the appellant failed to meet the requirements of the Immigration Rule relevant to his application (paragraph 245ZX(c)) and furthermore considered there was no breach of the appellant's rights under Article 8.

3. The basis on which permission to appeal was granted was confined to the single issue whether the decision to remove the appellant pursuant to s.47 of the Immigration, Asylum and Nationality Act 2006 was unlawful. Although noted in the determination by the judge as a basis for challenge (see [13(viii)] of the determination), it was not an issue on which she reached a decision.

4. Pursuant to the Tribunal Procedure (Upper Tribunal) Rules 2008, rule 24 the Secretary of State indicated that she did not oppose the application for permission to appeal to the extent that the s.47 decision was unsafe and invited the Tribunal to allow the appeal on the papers without any hearing solely on this point.

5. Despite that indication the case was listed for hearing, there was no appearance by the appellant. He is no longer represented. However I am satisfied that he ws served in accordance with the Procedure Rules with notice of hearing.

6. Miss Pal had nothing to add to the respondent's observation in the rule 24 response.

7. My conclusions are as follows. The judge failed, when dismissing the appeal, to indicate whether this was against the decision refusing to vary leave or the decision to remove the appellant or both. In *Adamally and Jaferi (Section 47 removal decisions: Tribunal Procedures)* [2012] UKUT 00414)(IAC)) the Tribunal held:

> "When a removal directions is purportedly under Section 47 of the Immigration Asylum and Nationality Act 202 is made concurrently with the decision refusing further leave:
>
> (i) The section 47 decision is unlawful, but
>
> (ii) The decision would be in need for a separate decision, that
>
> (iii) Still requires determination:
>
> (iv) S.85(1) of the Nationality, Immigration and Asylum Act 2002 brings the two decisions into one appeal, but
>
> (v) S.86 of that Act allows and requires the determination to reflect differences in outcome."

8. This approach was approved by the Court of Appeal in *SSHD v Ahmadi* [2013] EWCA Civ 512.

9. I am satisfied that the First-tier Tribunal judge erred in law by failing to appreciate the need to determine the appeal insofar as it related to each decision. I therefore set aside her decision and proceed to remake it. I allow the appeal insofar as it relates to the decision under s.47. Having regard to the sustainable reasons given by the judge for concluding that the appellant had not made out his grounds under the Immigration Rules and under Article 8 of the Human Rights Convention, I dismiss the appeal in relation to the refusal to vary the appellant's leave.

10. The First-tier Tribunal judge made an anonymity direction. I see no reason for this being continued and none is therefore made in the Upper Tribunal.

Signed

Date 6 August 2013

Upper Tribunal Judge Dawson

Dated 6 August 2013