



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

Appeal Number: IA/09299/2013

THE IMMIGRATION ACTS

Heard at Field House

On 21st November 2013

**Determination
Promulgated**

On 13th January 2013

Before

**THE HONOURABLE LORD MATTHEWS
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE REEDS**

Between

SUKHWINDER SINGH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Khan, Legal Representative on behalf of Lincolns Solicitors

For the Respondent: Mr G Saunders, Senior Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of India born on 14th July 1970. He claims to have entered the UK on 5th September 1996. On 5th July 2012 he made an application for indefinite leave to remain under the fourteen year long

residence Rule and for leave to remain based on the fact that he had established a private and family life in the United Kingdom. That application was refused by the Respondent in a notice of immigration decision dated 13th March 2013 and the reasons given to refuse that application were set out in an accompanying reasons for refusal letter. It was stated that the Appellant had not established his presence in the UK for a period of fourteen years and that the documentary evidence only indicated a presence between the years 2006 and 2010. The Respondent also gave consideration to the application under paragraph 276ADE of the Immigration Rules but concluded that the Appellant did not meet any of those requirements.

2. The Appellant exercised his right to appeal that decision and the appeal came before the First-tier Tribunal (Judge Meates) on 31st July 2013. In a decision promulgated on 13th August 2013 Judge Meates dismissed the appeal under the Immigration Rules and on human rights grounds (Article 8). The judge had the opportunity to hear the oral evidence of the Appellant and consider it in the context of the documentary evidence produced and for that to be tested in cross-examination. It is plain from the determination that he found the evidence of the Appellant to “lack all credibility” (see paragraph [24]) for the reasons given in the determination and concluded that he had been unable to substantiate his presence in the UK for the period 1996 to 2006. Whilst the judge did accept his presence in the UK from 2006, it was conceded on the Appellant’s behalf that he could not meet the requirements of Rule 276ADE. In respect of Article 8 at paragraphs 26 – 29 of the decision, the judge considered his claim outside the Rules, but found that the decision to remove was proportionate for the following reasons; he had spent the majority of his life in India, there was nothing to suggest that he could not continue his economic activity in India upon return, he did not have any close family in the UK and only had a limited number of friends, he was in good health and there was nothing to suggest that he could not re-establish his private life in India. Thus the judge dismissed his appeal.
3. An application was made to appeal that decision advancing two grounds; firstly that the Secretary of State had issued a removal direction and a refusal to grant leave in the same notice and it was submitted “The current practice of the SSHD to incorporate both decisions in a single notice is incompatible with the relevant legislation”, relying on the decision of the Upper Tribunal in **Ahmadi (Section 47 decision: validity; Sapkota) [2012] UKUT 00147 (IAC)**. The second ground advanced was that the judge had failed to deal adequately with the Article 8 claim.
4. On 6th September 2013 permission to appeal that decision was refused by First-tier Tribunal Judge Somerville. He said this:-

“The background is that the Appellant entered the UK illegally in September 1996 and has lived and worked here ever since. He claimed therefore that he was entitled to remain on the basis of fourteen years’ residence. The

First-tier Judge found that the Appellant's evidence was incredible and that he had failed to satisfy him that he had been continuously resident for fourteen years.

The first ground seeking permission contends that the FTJ erred in law in failing to find that the decision to remove was unlawful as that decision had been made at the same time as the decision to remove. Reliance is placed on the case of **Ahmadi [2012] UKUT 00147**. This decision was overturned by the Court of Appeal in the case of (judge Somerville did not complete this sentence).

The second ground of appeal, in effect is that the FTJ did not properly and adequately deal with the Appellant's Article 8 claim. Although the reasoning was brief it is apparent that the FTJ considered the five steps in **Razgar** even if he did not mention that case by name. There is no realistic prospect that a different Tribunal would come to a different conclusion on the facts. The grounds are without merit."

5. The Appellant subsequently renewed his application before the Upper Tribunal on the same grounds. On 2nd October 2013 Upper Tribunal Judge King granted limited permission to appeal for the following reasons:-

"The Appellant claims fourteen years' residence. The judge did not accept his evidence or find any basis upon which he should remain within the jurisdiction. There is no error in the findings which were open to be made. However reliance is placed upon **Ahmadi** on the basis that the decision to remove should not have been made in the same decision letter. On that limited basis leave is granted. If the Respondent were to agree that such was an error the matter need not come for hearing as the appeal could be allowed on that limited basis with the other findings preserved.

Directions

The matter will be listed for oral hearing unless the Respondent within 21 days from today concedes the **Ahmadi** point. In which case the matter will be dealt with on the papers."

6. Nonetheless the appeal was listed before the Upper Tribunal. As can be seen from the terms of the grant, permission to appeal the decision of the First-tier Tribunal in respect of Article 8 was not granted. Mr Khan relied upon the limited grant of permission namely that it was unlawful for the Secretary of State to remove the Appellant in a single notice and this was incompatible with the legislation relying on the Upper Tribunal decision of **Ahmadi** (as previously cited) and therefore the judge made an error of law in not allowing the appeal by remitting the decision to the Secretary of State. Mr Saunders on behalf of the Secretary of State submitted by way of reply that there was no error of law in the determination and the judge had dealt with all the issues and that the only decision outstanding was to remove the Appellant, as he had failed to establish his claim under the Immigration Rules and under Article 8.
7. We reserved our decision. Following the hearing we issued further directions to the parties on 21st November 2013. At the hearing it

appeared that both parties sought to submit that the decision to remove was one that was still outstanding. Mr Khan still relying on the decision in **Ahmadi**. As noted in the directions, the parties and the judge granting permission appear to have read the decision as one made under Section 47 of the 2006 Act. As neither party had dealt with that at the hearing we considered that the parties should have the opportunity to make any further submissions. Thus the parties had fourteen days from the date of service of the directions to send any further written submissions. It was further directed that in the absence of any response to the directions the Tribunal would determine the appeal on the evidence that was before it. Neither party has responded to those directions and neither party has therefore sought to make any further representations before the Tribunal.

8. We consider that the decision of the First-tier Tribunal (Judge Meates) does not disclose an error of law. The grounds relied upon by Mr Khan and the limited grant of permission appear to have read the decision in this case as one made under Section 47 of the 2006 Act. This is in error as the decision made by the Secretary of State in relation to the Appellant was not one made to refuse to vary leave to remain and a decision to remove under Section 47 of the 2006 Act but one made under Section 10 of the 1999 Act to remove an illegal entrant. Thus the decision of the Upper Tribunal in respect of **Ahmadi** (relied upon by Mr Khan) (which in any event was considered further by the Court of Appeal in **Ahmadi [2013] EWCA Civ 512**) does not apply to this Appellant. The Court of Appeal in that case said that where a Section 47 decision was made at the same time as the decision to vary leave, the proper course was to allow the appeal against the decision to remove under Section 47. As we have said, that does not apply to this Appellant as the decision was not one made under Section 47 of the 2006 Act. In those circumstances the Appellant has not demonstrated that the First-tier Tribunal erred in law and we therefore uphold the determination.

Decision

9. The First-tier Tribunal did not make an error of law, the decision stands.

Signed

Date: 7/1/2014

Upper Tribunal Judge Reeds