



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

Appeal Number: IA/48702/2013

THE IMMIGRATION ACTS

Heard at Field House

**On 14th April 2014
Given extempore**

Determination

**Promulgated
On 8th August 2014**

Before

Upper Tribunal Judge Chalkley

Between

MOHIL KUMAR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Richmond, Counsel instructed by Richmond Chambers LLP

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of India, who was born on 20th November, 1972, and who made application to the respondent through solicitors for indefinite leave to remain in the United Kingdom, outside the Immigration

Rules. The respondent refused that application in a letter dated 3rd November, 2013, and on 11th November, 2013, directed the appellant's removal as an illegal entrant or a person subject to administrative removal under Section 10 of the 1999 Act. The appellant appealed that decision and his appeal was heard by First-tier Tribunal Judge Maxwell at Richmond on 20th February this year.

2. The appellant claimed to have been deserted by his natural parents when he was very young and thereafter to have been reared by his maternal grandparents in India until he was approximately 12 years of age. His grandparents then decided to emigrate to the United States of America to live with their son and, he claimed, brought him to the United Kingdom in 2005, ostensibly to visit their daughter and her family. They told the appellant's aunt and uncle that they were taking the appellant to live with them in the USA, but in fact left him in their care after about a week when they continued their onward journey. The appellant and his grandparents had been granted family visit visas to enter the United Kingdom.
3. Shortly after their arrival in the USA, the appellant's grandparents apparently contacted their daughter and son-in-law and informed them that they were not intending to bring the appellant to the United States and that they would leave him in the United Kingdom in their care.
4. The appeal was heard by First-tier Tribunal Judge Maxwell who considered the human rights appeal under Article 8 and dismissed the appeal. Unfortunately, in doing so, he did not indicate anywhere in his determination the standard of proof he was applying. That formed the first basis of challenge on behalf of the appellant.
5. Before me today Mr Tufan accepted that there was no indication in the determination anywhere as to the standard of proof applied by the judge, although the burden of proof was referred to at paragraph 11 of the determination. Since the judge will frequently deal with asylum matters, irrespective of any other jurisdictions the judge might sit in, he will be familiar with the two alternative standards applicable in this jurisdiction and it is imperative that he indicates in his determination which standard he is applying. Since he has not done so in this determination, I set it aside. None of the findings of fact shall stand.
6. Mindful of the Senior President's Practice Statement, I concluded that it is likely that the appellant will have an earlier hearing before the First-tier Tribunal than would be the case were the matter to remain with the Upper Tier and, as a result, the matter is remitted to the First-tier Tribunal for hearing by a judge other than First-tier Tribunal Judge Maxwell.

Upper Tribunal Judge Chalkley