



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

Appeal Number: IA/36469/2014

THE IMMIGRATION ACTS

Heard at Field House

On 21 April 2015

**Decision &
Promulgated
On 1 May 2015**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**MR JERIN JOSE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Claimant

Representation:

For the Appellant: Mr C Avery (Home Office Presenting Officer)

For the Claimant: No appearance

DECISION AND REASONS

1. I shall refer to the parties as follows; the appellant in this matter is the "Secretary of State" and Mr Jose shall be referred to as the "Claimant".
2. The Claimant whose date of birth is 19 December 1985 is a citizen of India. He appealed a decision made by the Secretary of State on 1 September 2014 refusing his application to vary leave and making removal directions under Section 47 Immigration and Asylum Act 2006.

3. The appeal was determined on the papers and promulgated on 13 January 2015 by the First-tier Tribunal (Judge Phull) (“FTT”), who allowed the appeal to the extent that the decision made by the Secretary of State was not in accordance with the law on the grounds that the Secretary of State failed to consider Article 8 ECHR. The FTT directed that the matter be remitted to the Secretary of State for reconsideration.
4. The Secretary of State applied for permission to appeal on the grounds that the Tribunal erred in reaching its decision having regard to the fact that the Secretary of State had considered Article 8 outside of the Rules in the Reasons for Refusal Letter under the heading “Exceptional Circumstances”.
5. The grounds further argued that the Tribunal ought to have gone on to reach a decision by either allowing or dismissing the appeal under Article 8 outside of the Rules.
6. In granting permission Judge Brunnen found that it was arguable that the Tribunal misapprehended the content of the Reasons for Refusal Letter, which had considered the claim under the heading “Exceptional Circumstances”. The Secretary of State considered the Claimant’s ill health; the fact that he was suffering from tuberculosis, and the further issue that he was awaiting the issue of a CAS in order to pursue his studies.

Error of Law Hearing

7. The Claimant did not attend for the hearing. I was satisfied that notice of hearing dated 19 March 2015 had been sent to him at his last known address. No communication was received by or on behalf of the Claimant to explain why he was not able to attend the hearing. There was no application for an adjournment. I decided to proceed to hear the appeal in the absence of the Claimant pursuant to Rule 2 and Rule 38 Tribunal Procedure Rules (Upper Tribunal) 2008.
8. Mr Avery relied on the grounds of appeal. He submitted that the Tribunal had made a clear error in concluding there had been a failure to consider Article 8. Article 8 was considered in the Reasons for Refusal Letter. The Tribunal ought to have gone on to reach a decision under Article 8. Mr Avery submitted that the proper course of action would be for the Upper Tribunal to remake the decision and to dismiss the appeal under Article 8 grounds.

Discussion and Decision

9. I find that there was a material error of law in the decision made by the First-tier Tribunal. The Secretary of State clearly considered whether or not there existed exceptional circumstances for consideration of Article 8 ECHR outside of the Rules. This was set out in the Reasons for Refusal Letter dated 1st September 2014 under the heading “Exceptional

Circumstances". The two main issues relied on by the appellant were his ill-health and his studies. He relied on a letter dated 4 March 2014 from Bart's Health NHS confirming a diagnosis of pericardial, plural and mediastinal lymphadenopathy secondary to fully sensitive mycobacterium tuberculosis. He was treated from October 2013 to 15 April 2014 and was discharged for follow-up at the TB Clinic in August 2014. The appellant also adduced evidence of his studies at the University of Wales and his award of an MBA on 7 March 2012.

10. I find that the appellant entered the UK as a student in 2010. He was granted leave to remain as a student and further leave as a Tier 1 (Post-Study Work) Migrant until 29 June 2014. His present application was for further leave to remain on the basis of private life. This was considered and refused by the Secretary of State under the Rules with reference to paragraph 276ADE of the Immigration Rules. The FTT dismissed the appeal on immigration grounds. In view of the Secretary of State's consideration that there were no exceptional circumstances, the proper course was for the Tribunal to deal with the Article 8 issue. I am satisfied that there was no failure on the part of the Secretary of State and that the decision made was in accordance with the law and the Immigration Rules. The Tribunal materially erred in allowing the appeal on that basis and remitting the matter to the Secretary of State. I now propose to remake that decision as follows.
11. I have considered the Claimant's grounds of appeal on human rights grounds outside of the Rules. I am satisfied that Article 8 is not engaged under private life in the UK. The Secretary of State considered the two issues relied on namely his health and the fact that he wishes to continue to pursue his studies. Neither of these issues on the evidence is capable of establishing private life in the UK. The Claimant entered as a student and has since been granted leave in that temporary capacity only. He would be able to re-establish a private life on return to India where he could pursue studies. The medical evidence indicates that his TB is now under control and he receives only follow-up appointments. There is no evidence of exceptional circumstances for a grant of leave outside of the Rules.

Notice of Decision

I find a material error of law in the determination. I set aside the determination. In remaking that decision I substitute a decision dismissing the appeal under immigration grounds and human rights grounds.

No anonymity direction is made.

Signed

Date 29.4.2015

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 29.4.2015

Deputy Upper Tribunal Judge G A Black