IAC-FH-AR-V1

**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: IA/42502/2013

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 4 February 2015** | **On 10 February 2015** |

**Before**

**THE HONOURABLE MRS JUSTICE PATTERSON DBE**
**DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MD FOKROL ISLAM**
**(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**
For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer
For the Respondent: No appearance or representation

**DECISION AND REASONS**

1. On 28 October 2014 in a decision letter of the First-tier Tribunal which was promulgated on that date, the First-tier Tribunal dismissed the appeals made by Mr Islam on three grounds but allowed that against the decision to remove him under Section 47.

2. The background is that the appellant, is a citizen of Bangladesh. He arrived in the United Kingdom on 28 January 2010 with leave as a Tier 4 (General) Student which was valid until 30 April 2013. On that day he

sought an extension of his leave. That application was considered on the basis of the documents submitted with his application form. He required a total of 40 points to be granted the extension under Rule 245ZX(a). 30 points needed to be awarded for attributes and 10 points for maintenance. He was awarded 0 points for maintenance because the bank statements that he relied upon were shown to be false. His application was, therefore, refused. He contended also that as he was in the middle of his course of study and had paid his course fees he should not be removed. He relied in that regard on the case of **Ahmadi [2012] UKUT 147**. That claim was rejected by the Tribunal.

3. In relation to the claim against removal, the First-tier Tribunal Judge said, in paragraphs 6 of his decision:

> "In light of the decision in the case of **Adamally and Jaferi (Section 47 removal decisions: Tribunal Procedures) [2012] UKUT 00414 (IAC)** where the Tribunal found that removal directions in a variation case were not in accordance the law, I allow the appeal against the decision remove the appellant under Section 47 of the 2006 Act."

4. The grounds of appeal in relation to the decision say, in paragraph 2:

> "The decision to remove was made on 25 September 2013. Therefore after 8 May 2013 and thus benefiting from the amendments made by Section 51 of the Crimes and Courts Act 2013 which makes the removal decision lawful."

5. Permission to appeal was granted on 17 December 2014. The relevant paragraph says this:

> "The grounds argue that the decision to remove was made on 125 September 2013, which is after 8 May 2013, and thus benefiting from the amendments made by Section 51 of the Crimes and Courts Act 2013, which makes the removal decision lawful. The grounds submit that in allowing the appeal under Section 47 the judge has therefore made an error of law such that the decision should be set aside."

6. The judge granting permission was satisfied that the grounds were arguable.

7. The previous legal position was summarised in the case of **Ahmadi** where Upper Tribunal Judge Lane said, in paragraph 19:

> "It is in accordingly without any enthusiasm that I have come to the conclusion that Mr Malik is, in substance, correct in his submissions regarding the ambit of Section 47 and that the respondent's current practice of including a Section 47 decision in the same decision letter as that regarding the refusal or curtailment of leave is incompatible with the relevant legislation."

8. In paragraph 22 Upper Tribunal Judge Lane contemplated as follows:

> "It would clearly be possible for Parliament to amend Section 47 of the 2006 Act so as to enable the respondent to make simultaneous decisions in case of the present kind. Unless and until that is done,

however, a Section 47 decision can be made only once the variation decision has been given to the person concerned compatibly with the immigration notices (Regulations 2003)."

9. Section 51 of the Crimes and Courts Act 2013 was passed precisely to effect the change contemplated by Upper Tribunal Judge Lane. That Section reads, where relevant:

> "(3) For Section 47(1) of the Immigration, Asylum and Nationality Act 2006 (decision that person is to be removed from the United Kingdom may be made while person can bring appeal) substitute –
>
> (i) Where the Secretary of State gives written notice of a pre-removal decision to the person affected, the Secretary of State may,
>
> (a) In the document containing that notice,
>
> (b) In a document enclosed in the same envelope as that document,
>
> (c) Otherwise on the occasion when that notice is given to the person, or
>
> (d) At any time after that occasion but before an appeal against the pre-removal decision is brought under Section 82(1) of the Nationality, Immigration and Asylum Act 2002, also give the person written notice that the person is to be removed from the United Kingdom under this Section in accordance with directions given by an Immigration Officer if and when the person's leave to enter or remain in the United Kingdom expires."

10. It follows that after 8 May 2013 when the amended Section was brought into effect, the Secretary of State was quite entitled to give a person written notice of removal from the United Kingdom at the same time as giving written notice of a pre-removal decision. That is what he did here on 25 September 2013. As a result without any hesitation this appeal is allowed.

**Notice of Decision**

The appeal is allowed.

No anonymity direction is made.

Signed Date 6 February 2015

Mrs Justice Patterson