



IAC-TH-WYL-V2

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

Appeal Number: IA/07808/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 February 2016**

**Decision & Reasons Promulgated  
On 3 March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE APLEYARD**

**Between**

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

Appellant

**and**

**MR ARSALAN KHATTAK  
(ANONYMITY ORDER NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr K Norton, Home Office Presenting Officer

For the Respondent: No appearance

**DECISION AND REASONS**

1. The appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were known before the First-tier Tribunal, with the Secretary of State referred to as “the respondent” and Mr Khattak as “the appellant”.
2. The appellant is a citizen of Pakistan who appealed against a decision to refuse to vary his leave to enter or remain in the United Kingdom and to remove him by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. He appealed that decision and following

a hearing at Birmingham, at which the respondent was not represented, Judge of the First-tier Tribunal Lodge allowed his appeal. The respondent sought permission to appeal which was granted by Judge of the First-tier Tribunal Heynes on 14 January 2016. His reasons for so doing were:-

- “1. The Respondent seeks permission to appeal, in time, against a decision of First-tier Tribunal Judge Lodge promulgated on 5 August 2015 allowing the appeal against the refusal of an application for leave to remain.
  2. The grounds of appeal complain that the Judge misdirected himself and gave inadequate reasons for the decision.
  3. It is arguable that the Judge erred in his approach because the appeal before him related to an application for further leave on the basis of private leave.”
3. Thus the appeal came before me today.
  4. There was no appearance from the appellant or his representative. I considered a letter dated 24 February 2016 from Imperium Group, Immigration Law Specialist who represents the appellant. It confirmed that they were not instructed to attend the hearing and that the appellant, with the help of the respondent (Voluntary Departures Team) had left the United Kingdom and returned to his country of origin. This was corroborated by the HOPO's own information. The letter suggested that as a consequence the appeal could be treated as “abandoned in line with Section 104 of NIAA 2002”.
  5. Mr Norton relied on the respondent's grounds of appeal and reminded me that the original refusal of the appellant's application related to issues of private and family life and that these were reflected in the grounds of appeal that fell to be considered by the Judge of the First-tier Tribunal. The judge had purported to allow the appeal though on the basis that the appellant's leave should have been extended to enable him to attend a course and for it to be completed. That it was said amounted to a material error of law. In light of the issues that fell to be considered the appeal should have been dismissed consequent upon the findings of the judge within his decision.
  6. On my own analysis I accept the submissions of Mr Norton to the effect that the Judge of the First-tier Tribunal has materially erred and that the appeal should be re-made by dismissing it.

### **Notice of Decision**

The making of the decision in the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I re-make the decision in the appeal by dismissing it.

Signed

Date: 29 February 2016

Deputy Upper Tribunal Judge Appleyard