



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/01977/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 9<sup>th</sup> October 2013  
Extempore Judgement

Determination Sent  
On 23<sup>rd</sup> October 2013

Before  
MISS E E ARFON-JONES DL, VICE PRESIDENT  
UPPER TRIBUNAL JUDGE MARTIN

Between

MR VIKRAM VASHIST

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Not Present or Represented  
For the Respondent: Mr G Saunders (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Appellant against the Decision of First-tier Tribunal (Judge Blackford) who heard the matter at Taylor House on 12<sup>th</sup> July 2013. By a determination promulgated on 31<sup>st</sup> July he dismissed the appeal. The appeal was in relation to a refusal to vary leave as a Tier 4 student and to remove by way of directions. The Tribunal dismissed the appeal but did not deal with the

decision to remove the Appellant pursuant to s47 Immigration, Nationality and Asylum Act 2006.

2. The Appellant sought permission to appeal which was granted by a Judge of the First-tier Tribunal.
3. The Appellant had requested that the Upper Tribunal decide the appeal on the basis of the papers and thus there was no attendance by or on behalf of the Appellant.
4. The first ground on which permission was sought was that the First-tier Tribunal should have adjourned the case and that it was unfair not to have done so given the Appellant's ill health. The Tribunal noted that there had been an application for an adjournment on the basis of his ill-health which had been refused prior to the hearing. They noted that there had been a previous application for an adjournment which had been allowed on the basis that any further application to adjourn should be supported by medical evidence. In relation to the application for an adjournment there was a note from a doctor referring to back pain but no indication that the Appellant was unable to attend the hearing and in those circumstances the adjournment application, which did not comply with the previous directions, the Tribunal refused to adjourn. That was perfectly proper and there is no error of law in failing to adjourn.
5. The next criticism is that the First-tier Tribunal failed to deal with Article 8. Although Article 8 is pleaded in the grounds of appeal, there was no evidence adduced in relation to Article 8 and therefore no evidence on which the Judge could possibly have allowed the appeal on Article 8 grounds. Thus while failing to deal with a pleaded ground of an appeal is an error of law it could not have affected the outcome and thus the error is not material.
6. The ground which does have merit is the assertion that the Judge erred in failing to find the removal decision unlawful. The Secretary of State had made a removal decision under s47 of the Immigration, Nationality and Asylum Act 2006 which we now know, on the basis of Ahmadi [2012] UKUT 147 (IAC) she had no power to do. Insofar as the Tribunal failed to make that finding it made an error of law and we re-decide the appeal in that regard only. The substantive appeal in relation to the refusal to vary leave shall stand.
7. In re-deciding the matter we find that the Secretary of State's decision to remove the Appellant from the UK was unlawful and therefore the appeal to the Upper Tribunal is allowed to the limited extent that there is no extant removal decision. The substantive appeal in relation to the refusal to vary leave remains dismissed.

Signed

Date 9<sup>th</sup> October 2013

Upper Tribunal Judge Martin