



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

Appeal Number: IA/01511/2014

THE IMMIGRATION ACTS

Heard at Field House

On 18th July 2014

Determination

Promulgated

On 01st October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**MR PAWAN MAHARJAN
(ANONYMITY NOT DIRECTED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No attendance

For the Respondent: Mr G Saunders, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nepal who was born on the 5th June 1989. His application for leave to remain as the spouse of a person who is settled in the United Kingdom was refused on the 12th December 2013. At the same time, the respondent decided to remove him from the United Kingdom. His appeal against the former decision was dismissed by the First-tier Tribunal (Judge Pears) in a decision that was promulgated on the 13th May 2014.

Permission to appeal was granted to the Upper Tribunal on the sole ground that “the grounds disclose an arguable error of law with regard to the failure by the judge to address the issue regarding section 47”.

2. The grounds of appeal to the Upper Tribunal refer to the First-tier Tribunal’s failure to make “a decision to set removal directions under section 47 UK Borders Act 2007”. This reference is repeated in the grant of permission to appeal to the Upper Tribunal. However, that section is concerned with “police civilians”. It does not therefore have any obvious application to the issue of the appellant’s removal from the United Kingdom. I shall therefore assume that the intended reference was to the section 47 of the Immigration, Asylum and Nationality Act 2006.
3. There was no appearance by or on behalf of the appellant at the hearing before me on the 18th July 2014. I was nevertheless satisfied that the appellant had been served with notice of the time, date and place of the hearing. I therefore decided that it would be just to proceed to determine the appeal without further delay.
4. The grounds of appeal to the First-tier Tribunal simply asserted that, “the Section 47 decision is unreasonable in all the circumstances”. No particulars of the alleged ‘unreasonableness’ were provided.
5. Section 47 of the 2006 Act, as substituted by Section 51 of the Crime and Courts Act 2013, permits the Secretary of State to refuse an application for further leave to remain and simultaneously to issue directions for the applicant’s removal. The exercise of that power cannot be challenged on appeal to the Tribunal unless it amounts to an irrational exercise of discretion, thus rendering it “not in accordance with the law”.
6. The Secretary of State is not obliged to make a decision to remove an applicant following refusal of his application to remain in the United Kingdom (see Patel and others v SSHD [2013] UKSC 72). Where however, as here, the Secretary of State has made a lawful decision to refuse an application for leave to remain, and it has been found that removal in consequence of that decision would not be incompatible with the applicant’s rights under the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, it is impossible to see how a decision to remove the applicant from the United Kingdom could constitute anything other than a rational (and thus lawful) exercise of the discretion conferred by Section 47 of the 2006 Act.
7. Permission to appeal against the dismissal of the appeal from the Secretary of State’s decision to refuse the appellant’s application for leave to remain in the United Kingdom was itself refused. Consideration of the Secretary of State’s decision to remove the appellant from the United Kingdom cannot possibly therefore affect the ultimate outcome for this appellant. It would

not be appropriate in such circumstances to delay matters further by remitting this appeal to the First-tier Tribunal, simply so that it may complete a decision-making process in respect of which the outcome is inevitable. It is therefore appropriate for the Upper Tribunal to complete the judicial decision-making process by dismissing the appellant's appeal against the decision to remove him from the United Kingdom.

Decision

8. The appeal against the respondent's decision to remove the appellant from the United Kingdom is dismissed.

Anonymity is not directed.

Signed

Date

Deputy Judge of the Upper Tribunal