



**The Upper Tribunal
(Immigration and Asylum Chamber)
IA/22314/2014**

Appeal number:

THE IMMIGRATION ACTS

Heard at Field House

Determination

On January 6, 2015

Promulgated

On January 8, 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR SURESH SUBRAMANIAM
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Capel, Counsel, instructed by Jein Solicitors
For the Respondent: Mr Wilding (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant, born December 4, 1989, is a citizen of Sri Lanka. The appellant entered the United Kingdom on June 11, 2011 as a Tier 4 (General) student. His leave was valid until March 30, 2014. On March 28, 2014 he applied for further leave to remain as a Tier 4 (General) student but the respondent refused his application on May 2, 2014 and at the same time took a decision to remove him by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006.
2. The appellant appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on May 20, 2014 and on October 7, 2014 Judge of the First Tier Tribunal Blandy (hereinafter referred to as the "FtTJ") heard his appeal and

in determination promulgated on October 9, 2014 he refused his appeal on the basis he had failed to satisfy the requirements of the Immigration Rules and no human rights claim had been advanced.

3. The appellant lodged grounds of appeal on October 15, 2014 and on November 20, 2014 Judge of the First-tier Tribunal Grant-Hutchinson gave permission to appeal finding there were arguable grounds that the FtTJ had erred by possibly not dealing with all of the appellant's claims.
4. The matter came before me on the above date and on that date the appellant was not in attendance but was represented. Solicitors had written to the Tribunal informing the Tribunal they were instructed and counsel confirmed that the solicitors had spoken to the appellant. I agreed that Miss Capel could represent the appellant's interests.

PRELIMINARY ISSUE

5. Miss Capel requested an adjournment on the basis her client was unfit to attend the hearing due to having recently been discharged from hospital. Mr Wilding submitted that the appellant had submitted his own grounds of appeal and the Tribunal was capable of determining an error in law without him being in attendance.
6. In considering the adjournment request I have had regard to Regulations 2 and 5 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended).
7. I was satisfied that Miss Capel was able to deal with whether the FtTJ had materially erred although I indicated that if there was an error I would consider adjourning the matter to another date. A similar request for an adjournment had been made and refused on January 5, 2015 and had been dealt with administratively. Whilst I noted some documents that were unreadable were now in fact viewable the issue in this case was not the appellant's current medical condition but whether the appellant's grounds of appeal had any merit. I was satisfied that as counsel had not been in the original hearing she had to rely on the grounds filed and there was no reason to adjourn the error of law hearing for the appellant to be in attendance. I therefore refused the adjournment request.

ERROR OF LAW SUBMISSIONS

8. Miss Capel relied on the appellant's grounds of appeal and submitted that he had raised mental health, risk on return and private life at the earlier hearing. She noted the court and presenting officer record referred to the appellant stating in oral evidence he could not return home and she submitted this should have alerted the FtTJ to issues of possible persecution and/or serious harm. Although the issues were not raised in any real

detail it was incumbent on the FtTJ to have regard to the fact he was unrepresented and consider all avenues of appeal even though he told the FtTJ he did not want to pursue a claim for asylum. The FtTJ failed to question the appellant or give reasons for dismissing his article 8 claim.

9. Mr Wilding submitted neither the presenting officer's nor the FtTJ's notes corroborated the appellant's claim that he had argued article 8, mental health or risk of persecution. Although his ground of appeal raised article 8 he did not put any evidence forward to support his claim. The FtTJ dealt with all matters placed before him and his decision was open to him.

ERROR OF LAW ASSESSMENT

10. The FtTJ kept a written note of the proceedings. Those notes confirmed his evidence only concerned why he did not meet the Rules including the fact why he felt the college would not accept him. He then told the FtTJ that all last year he had been trying hard and he felt he could not return to Sri Lanka. He made it clear he did not claim asylum as he did not want to. The presenting officer's note was similar in content.
11. Miss Capel invited me to find the reference to him being unable to return to Sri Lanka as evidence that he was in fear of being persecuted. I am unable to make that finding, as neither the FtTJ's notes nor the presenting officer's notes support that assertion. The appellant spoke of his efforts to study and I read the notes as if he had studied and worked hard here and was therefore unable to return to Sri Lanka.
12. Whilst there is a reference to asylum the appellant makes it clear he had not applied for asylum, as he did not want to make such an application. There was no reference in the record of proceedings to persecution or any mental health issues.
13. The available evidence simply does not support the appellant's submission that the FtTJ failed to consider his mental health or any asylum or humanitarian claims.
14. The court record specifically confirms that the appellant did not wish to pursue an asylum claim at that hearing. I am further satisfied that decision also extends to humanitarian protection and any mental health claim.
15. The appellant has provided some evidence that suggests he is now unwell and that may well be the case although a more substantive document would be needed to support a claim of ill health. The appellant made no reference to his mental health and whilst I note he was admitted to hospital on December 19 and remained there as an inpatient until his release on December 30, 2014 this does not mean he raised medical issues before the FtTJ.

Neither the court record nor the presenting officer's note supports this claim.

16. Mr Wilding submitted the content of his grounds of appeal amounted to nothing more than a "wish list" of claims and I am satisfied that the grounds do not reflect what happened at the earlier hearing.
17. I am told the appellant has an appointment about his asylum claim on January 9, 2015 and that is clearly the correct place for that claim to be pursued.
18. He raised private life in his original grounds of appeal. There is no evidence that he argued anything other than the mere fact he was a student and that related to why his application had been refused. In the absence of any other evidence the FtTJ would have had no basis to allow an article 8 claim bearing in the decision of Nasim and others (Article 8) [2014] UKUT 00025 (IAC). At paragraph [20] the Tribunal stated in that case-

"We therefore agree with Mr Jarvis that [57] of Patel and Others is a significant exhortation from the Supreme Court to re-focus attention on the nature and purpose of Article 8 and, in particular, to recognise its limited utility to an individual where one has moved along the continuum, from that Article's core area of operation towards what might be described as its fuzzy penumbra. The limitation arises, both from what will at that point normally be the tangential effect on the individual of the proposed interference and from the fact that, unless there are particular reasons to reduce the public interest of enforcing immigration controls, that interest will consequently prevail in striking the proportionality balance (even assuming that stage is reached)."

19. Any private life claim would not have satisfied the Immigration Rules and there was no basis to allow the appeal outside of the Rules based on the evidence presented and in light of available case law.
20. I am satisfied that there was no material error.

Decision

21. The decision of the First-tier Tribunal did not disclose an error. The original decision shall stand.
22. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) an appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No such order was made in the First-tier and I see no reason to make such an order now.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis



TO THE RESPONDENT

I make no fee award as the appeal was dismissed.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

