



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

Appeal Number: IA/45484/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5 July 2016**

**Decision & Reasons
Promulgated
On 12 July 2016**

Before

UPPER TRIBUNAL JUDGE WARR

Between

**MAULIKBHAI PATEL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of India born on 18 May 1986, appeals the determination of a First-tier Judge on 24 July 2015 dismissing his application for further leave to remain. The respondent refused the application on 27 October 2014.

2. The appellant did not attend the hearing before the First-tier Judge. The appellant's representatives had sent a letter dated 16 July 2015 requesting the appeal to be determined on the papers only. Reliance was placed on a witness statement dated 16 July 2015.
3. The proceedings before me took a similar turn in that there was no appearance on behalf of the appellant and a similar letter had been sent to the Upper Tribunal as had been sent to the First-tier Tribunal requesting the appeal to be determined on the papers. Further, reliance was placed on the appellant's earlier witness statement.
4. The appellant's difficulties stem from a failure to complete part of the application for leave to remain form where claimants were asked to identify the category in which they were applying for an extension of stay in the United Kingdom. He stated in that section:

"Please refer to our covering letter, for reasons for this application we will forward to you shortly".
5. The letter enclosed was scarcely more helpful and stated:

"The grounds of the application we will send you shortly."
6. The respondent refused the application on 27 October 2014 with the grounds of the application still not having been submitted. The refusal was under paragraph 322(9) of the Immigration Rules which provides that leave should normally be refused where there has been a failure by an applicant to produce within a reasonable time "information, documents or other evidence required by the Secretary of State to establish his claim to remain under these Rules ..."
7. The judge remarks in paragraph 11 of his decision that the grounds were not particularised and "were as unhelpful as the appellant was unco-operative."
8. The grounds had first been identified in the appellant's witness statement of 16 July 2015 as being an application for discretionary leave to remain on the basis of nine years' long residence outside the Immigration Rules.
9. The judge observes that there was no reason why, if that had been the basis of the application, it could not have been stated either in the application form or in the grounds of appeal.
10. While the appellant had referred to the obtaining of a replacement Indian passport the judge did not consider that a sufficient explanation since the appellant could have made it clear what ground he was relying on and explained that the passport would be forwarded later. The determination continues as follows:

- “13. The appellant argues that the respondent, in email correspondence gave him until 3 November 2014 in which to supply the grounds for his application but proceeded to make a decision on 27 October 2014 instead. The appellant states that he gathered all the documents required as part of his application and sent them to his solicitors by 30 October 2014 with a view to them forwarding them to the respondent by 3 November 2014. The fact that the no such documents have been forwarded to the tribunal in support of his appeal causes me to doubt the veracity of this assertion.
14. So far as the appellant being misled by the respondent is concerned, I have examined the email correspondence. It is undoubtedly the case that emails from the respondent prior to 22 October 2014 gave the unambiguous impression that the information required should be provided by 3 November 2014. However this changed in the email from the respondent to the appellant’s solicitors dated 22 October 2014 when any ambiguity was removed in the main body of the email where it was said
15. “Thank you for your letter dated 21 October 2014. However this letter did not contain the reason why your client is applying for leave to remain in the UK. If the reason is not submitted by the (sic) 24 October 2014, the application will be considered outside the Immigration Rules”.
16. It is true that the line at the bottom of the email still stated that it is:
- “Essential that you reply by 3 November 2014”
17. However any ambiguity caused by this was removed by the body of the email quoted above. In any event, if there was any confusion the appellant’s solicitors could simply have emailed back to confirm the date that they were working to. They did not do so. I do not therefore accept that the appellant or his solicitors were misled by the reference to the 3 November 2014 date.”
11. The judge then turned to the Article 8 issue raised in the appellant’s witness statement. The judge notes that as the decision had been made on 27 October 2014 it was caught by the changes made to the 2002 Act by the Immigration Act 2014. This precluded the Tribunal from considering a matter that the respondent had not previously considered. As no Article 8 or indeed any other new ground had previously been raised the judge considered he was precluded from considering the new matter. He also referred to the decision of the Court of Appeal in **Lamichhane v Secretary of State [2012] EWCA Civ 260** and concluded that it was not necessary for him to deal with Article 8 as the appellant might not raise

before the Tribunal any ground for the grant of leave to remain different from that which was the subject of the decision of the Secretary of State appealed against. In any event there were no compelling or exceptional circumstances requiring the judge to consider Article 8. The judge also considered, having referred to **Razgar v Secretary of State [2004] UKHL 27** that the respondent's decision would not be disproportionate. He further referred to Section 117B of the 2002 Act and concluded:

“26. The appellant only had leave to remain initially as a student and then as a Tier 1 post study worker knowing that without a permanent right to remain, he faced the prospect of having to return to India. I therefore give little weight to any private life established in the United Kingdom. Further it would not be unreasonable for the appellant to be returned to India. Contrary to his assertion in his witness statement, he still has ties to India through his parents as confirmed in his application form. Just as he has been able to establish a private life in the United Kingdom as he asserts, he would be able to do so again in India with the help of his parents. He would be able to obtain employment with the experience that he has obtained in the United Kingdom as well as an MBA degree from the University of Wales. It would not be unreasonable to expect him to return to India.”

12. The judge found that the appellant's removal would not be disproportionate and dismissed the appeal.
13. There was an application for permission to appeal. The application was refused by the First-tier Tribunal, finding the grounds to be poorly drafted. The application was renewed to the Upper Tribunal. A deputy judge considered that it was arguable that the First-tier Tribunal's reasoning was inadequate to deal with the ambiguity in the emails and in the circumstances this amounted to an arguable error of law.
14. The Deputy Upper Tribunal Judge had referred to **Ukus [2012] UKUT 00307 (IAC)**.
15. Mr Melvin submitted that it was difficult to see why permission had been granted. The First-tier Judge had dealt with the ambiguity point in paragraph 17 of the determination. It appeared that the appellant was simply attempting to draw out the appeal as long as possible. The judge had referred in paragraph 13 of the determination to no documents having been forwarded to the Tribunal and Mr Melvin said there were none in his file either.
16. It is somewhat surprising that permission to appeal has been granted in this case. The approach of the First-tier Judge was correct. I set out the relevant parts of the determination. He explains in paragraph 12 why he took the view that there was nothing to prevent the grounds having been furnished at an earlier stage. He takes into account the explanation given

by the appellant and the action that the appellant says he took which the judge refers to in paragraph 13. As the judge points out, no documents were forwarded to the Tribunal in support of the appellant's appeal which caused him to question the truth of the claim made by the appellant that documents had been sent to his solicitors. The judge went into the email chain with care. He was entitled to take the view that the body of the email dated 22 October 2014 made the deadline clear and any confusion could have been clarified by the appellant's representatives. It was open to the judge to find that neither the appellant nor his representatives had been misled as claimed.

17. The position before the Upper Tribunal is the same as the position before the First-tier Tribunal – the appellant does not attend and relies on the same material. It appears to me that the First-tier Judge did not err in law in concluding as he did with respect to the appellant's case under paragraph 322(9) of the Rules. He went fully into the ambiguity issue and indeed all other relevant issues both under the Rules and in respect of Article 8.
18. There appears to be no basis for an argument that the respondent erred in the exercise of discretion. The body of the email referred to by the First-tier Judge was quite clear and the representatives could have taken up any point based on the date set out at the bottom of the email and it was amply open to the judge to conclude that neither the appellant nor the representatives had been misled. Further, as the judge points out there was no reason for not volunteering the grounds earlier. The judge dealt with all issues under the Rules and in relation to Article 8. It is said in the grounds that he did not deal with the appellant's witness statement and submissions. The judge in fact dealt with all matters before him and indeed had doubts about the truthfulness of what was being put forward as he says in paragraph 13. Further he did not find that a sufficient explanation had been given for the failure to submit grounds. Despite a diligent search, I am unable to find any merit in this appeal. The judge's comments that the grounds of appeal were as "unhelpful as the appellant was unco-operative" sums the position up.
19. The decision of the First-tier Judge contained no material error of law and the decision is confirmed.
20. Appeal dismissed.
21. The judge made no anonymity order and I make none.

TO THE RESPONDENT
FEE AWARD

The judge made no fee award and I make none.

Signed

Date 11 July 2016

G Warr

Judge of the Upper Tribunal