



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/11756/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On May 13, 2019

Decision &

Promulgated

On May 22, 2019

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR GURWINDER SINGH

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Raza, Counsel instructed by Simman Solicitors

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, an Indian national, arrived in the United Kingdom on October 8, 2010 as a Tier 4 (General) Student and was subsequently granted leave to remain in that capacity until July 31, 2016. Applications for leave to remain on family and private life grounds was lodged on June 11 and September 18, 2015 but these were rejected and refused respectively. There was an appeal against the latter decision, but both the First-tier Tribunal and the Upper Tribunal refused the appellant's appeal.
2. There was a fresh decision taken by the respondent on September 21, 2017 and the appellant appealed that decision under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on October 4, 2017. That appeal came before Judge of the First-tier Tribunal Chana who in a decision dated August 8, 2018 dismissed the appellant's appeal.

3. Permission to appeal was sought on the basis that there had been procedural unfairness. Permission was granted by Upper Tribunal Judge Hanson on April 1, 2019 on the basis as set out in the grounds of appeal.
4. No anonymity direction is made.
5. The matter came before me on the above date and I was handed witness statements from former Counsel, Mr Rees, and the appellant's father, Mr Jarmail Singh.
6. This was a case where the Judge applied the principles of Devaseelan v SSHD [2002] UKIAT 00702 and effectively found there was no new evidence and upheld the original decision. There were issues at the First-tier Tribunal hearing regarding the appellant's medical condition and his subsequent removal to hospital by the ambulance service and the fact that his father had accompanied him to the hospital. The Judge had found that there was no good reason to adjourn the case and proceeded to deal with it in the absence of both the appellant and his father and effectively followed the previous decision.
7. The First-tier Judge had been invited for her comments but had not provided any material response to the grounds of appeal save that she relied on her decision and Record of Proceedings.
8. Mr Tarlow, on behalf of the respondent, considered the statements and indicated that subject to anything the Tribunal had to say he did not oppose the grounds brought by the appellant.
9. I am satisfied that there was a perceived unfairness and whilst ultimately the decision may have been the same there was no testing of the new evidence provided by the appellant and his father and there was no consideration of any of that evidence by the First-tier Judge.
10. For these reasons I find that there was an error in law and I remit the matter back to the First-tier Tribunal under Section 12(1) of the Tribunals, Courts and Enforcement Act 2007.

Notice of Decision

I set aside the original decision and remit the matter back to the First-tier Tribunal.

Signed

Date May 21, 2019

A handwritten signature in blue ink that reads "SPAR". The signature is written in a cursive style with a long horizontal stroke at the bottom.

Deputy Upper Tribunal Judge Alis