



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/24140/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 12<sup>th</sup> June 2019

Decision & Reasons Promulgated  
On 25<sup>th</sup> June 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MR SHIVDEEP KUMAR  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr S Bellara, Direct Access Counsel

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of India, appealed to the First-tier Tribunal against a decision made by the Secretary of State on 16<sup>th</sup> November 2018 refusing his application for leave to remain in the UK on the basis of his private life. First-tier Tribunal Judge L K Gibbs dismissed the appeal in a decision promulgated on 18<sup>th</sup> February 2019. The Appellant now appeals against that decision with permission granted by Judge P J M Hollingworth on 3<sup>rd</sup> May 2019.
2. The background to this appeal is that on 30<sup>th</sup> August 2009 the Appellant entered the UK with leave to enter as a working holidaymaker valid until 25<sup>th</sup> August 2011 and

thereafter overstayed in the UK. On 9<sup>th</sup> January 2018 he made an application for leave to remain on the basis of his private life saying that he is caring for his maternal aunt and uncle who need him to remain in the UK. He lodged an appeal against the decision to refuse his application.

3. The appeal was initially listed to be heard on 10<sup>th</sup> January 2019 in Newport. His representatives wrote to request that the appeal be transferred to Hatton Cross. That request was refused on 21<sup>st</sup> December 2018 and after that the Appellant's legal representatives wrote to the Tribunal asking for the appeal to be dealt with on the papers. The Appellant submitted a witness statement and a copy of his passport on 9<sup>th</sup> January 2019. The appeal was adjourned and listed to be heard in Hatton Cross on 28<sup>th</sup> January 2019. The Appellant was notified of that hearing. The Appellant did not attend the hearing at Hatton Cross and the First-tier Tribunal Judge was satisfied that the Appellant had been notified of the day, time and place of the hearing and proceeded with the hearing in the Appellant's absence.
4. The First-tier Tribunal Judge found that the Appellant failed to provide any evidence that he would face very significant obstacles to integration in India and that he had not demonstrated that he met the requirements of paragraph 276ADE of the Immigration Rules. The judge found that the Appellant failed to provide any evidence that he is caring for his aunt and uncle. The judge took into account the evidence before him of the Appellant's application for entry clearance as a working holidaymaker and the successful appeal against that as set out in the decision from Immigration Judge Moore on 23<sup>rd</sup> July 2009. Based on the evidence before him Judge Gibbs considered that the Appellant had not demonstrated that he had established private or family life in the UK or that the decision to remove him would interfere with any private or family life so as to engage Article 8. The judge also took into account Section 117 of the Nationality, Immigration and Asylum Act 2002 and found that there was a strong public interest in removing the Appellant.

### **The grounds of appeal**

5. The Appellant appealed against that decision on the grounds that he had requested that the appeal be considered only on the papers, whereas in fact it was considered at an oral hearing. He further contended that the Home Office made an error in his refusal letter in that it had said that he had entered the UK illegally, whereas in fact according to his passport and witness statement he entered legally with a visa. He also contended that all of his relatives are in the UK and none are in India. In the witness statement submitted on 9<sup>th</sup> January 2019 the Appellant also said that he was denied a fair trial as he never received a Home Office bundle.
6. At the hearing before me Mr Bellara submitted that the decision of the First-tier Tribunal should be set aside on the basis of procedural unfairness. He submitted that there was confusion in relation to the venue. He submitted that the Appellant had requested a paper hearing but in fact the matter was listed for an oral hearing. He contended that the Appellant had not received the Respondent's bundle. He submitted that the Appellant had shown him a letter which he said he had sent to Hatton Cross saying that he had been confused about the oral hearing notification.

He accepted that there was no date for this letter and he had not seen evidence that had been posted or that had been sent. He contended that all of the aspects of this matter taken together show that there was a procedural irregularity.

### **Error of Law**

7. In my view there is no procedural irregularity in this case and therefore no error of law.
8. The Appellant lodged an appeal against the decision of the Secretary of State indicating that he wanted to proceed by way of oral hearing. His solicitor requested that the hearing be transferred to Hatton Cross or Taylor House. That request was refused and on 24<sup>th</sup> December 2018. The Appellant's solicitors then wrote to the Tribunal requesting that the appeal be considered only on the papers and requesting a refund of the extra fee of £60. The matter was listed for hearing on 10<sup>th</sup> January but was adjourned as the Appellant did not attend.
9. A number of directions were issued and the case was subsequently listed for hearing on 28<sup>th</sup> January 2019 at Hatton Cross. The Appellant does not dispute that he received notice of that hearing. Although the matter was listed for hearing, as the Appellant did not appear, the judge went on to determine the appeal on the papers. I do not see any prejudice to the Appellant in this approach. The judge considered the appeal on the papers but the Appellant had the opportunity to attend an oral hearing in the venue he had requested but failed to take that opportunity. Although the Appellant was not represented at that time he had previously been represented and the decision to proceed on the papers had been taken with the benefit of legal representation. The Appellant was aware of the oral hearing date and could have attended had he wished to. He did not attend and the judge went on to determine the appeal on the papers as in accordance with the Appellant's request.
10. It appears that the Appellant may not have received the Respondent's bundle. However, the Respondent's bundle in this case comprises only the application form, the covering letter from the solicitors, the Notice of Appeal and the decision. These are all documents submitted by the Appellant.
11. It appears that at the hearing the judge was given documents relating to the previous appeal against the decision to refuse entry clearance as a working holidaymaker. Again these are documents that the Appellant had access to. Accordingly there was no prejudice to the Appellant in terms of any of the documents considered by the judge at the appeal. The judge clearly had the Appellant's witness statement and copy of his passport [4].
12. In conclusion, it is my view that there was no procedural irregularity. There was no prejudice to the Appellant in the way that the proceedings were conducted. The judge considered all of the available evidence and reached a conclusion open to her on the basis of that evidence that the Appellant had not demonstrated that his removal would breach Article 8 of the European Convention on Human Rights.

**Notice of Decision**

13. The decision of the First-tier Tribunal does not contain a material error of law.
14. The decision of the First-tier Tribunal will stand.
15. No anonymity direction is made.

Signed

Date: 20<sup>th</sup> June 2019

*A Grimes*

Deputy Upper Tribunal Judge Grimes

**TO THE RESPONDENT**  
**FEE AWARD**

As I have dismissed the appeal there is no fee award.

Signed

Date: 20<sup>th</sup> June 2019

*A Grimes*

Deputy Upper Tribunal Judge Grimes