



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

**Appeal Number  
IA/14193/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2 October 2014**

**Determination  
promulgated  
On 27 April 2015**

**Before**

**Deputy Judge of the Upper Tribunal I. A. Lewis**

**Between**

**Sumit Marken  
(Anonymity order not made)**

**Appellant**

**and**

**Secretary of State for the Home Department**

**Respondent**

**Representation**

For the Appellant: The Appellant in person.

For the Respondent: Ms J Isherwood, Home Office Presenting Officer.

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Kempton promulgated on 9 May 2014 dismissing the Appellant's appeal against the decision of the Respondent dated 10 March 2014 to curtail leave to remain and to remove him from the UK pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006.

**Background**

2. The Appellant is a national of India born on 8 January 1987. He was last granted leave to remain in the UK as a Tier 2 migrant until 14 September 2016 in order to undertake specified employment with ImpelNeo Technology Ltd. However, in the event the Appellant did not commence such employment. The

potential employer informed the Respondent and in the circumstances a decision was taken to curtail the Appellant's leave under paragraph 323A(a)(i) (1) of the Immigration Rules, and a decision was also taken to remove the Appellant pursuant to section 47 of the 2006 Act.

3. The Appellant appealed to the IAC. In his Grounds of Appeal the Appellant sought to explain his failure to take up his employment by reference to ill-health; his Grounds additionally, amongst other things, pleaded human rights grounds, and also referred to the Appellant being in a relationship with an EEA national. The Appellant indicated that he did not wish to attend an oral hearing of his appeal.

4. The First-tier Tribunal Judge dismissed the Appellant's appeal 'on the papers' (i.e. without a hearing) for reasons set out in his determination. The Judge essentially accepted that the Appellant had had good reason for not taking up his employment, but concluded that in circumstances where he had not obtained a further contract of employment curtailment of leave had been appropriate. The Judge declined to engage with the ground in respect of the relationship with an EEA national because that had not been the subject matter of the application under appeal (decision at paragraph 10), and concluded that it was necessary first for the Appellant to make an application under the EEA regulations. For similar reasons the Judge also declined to entertain the Appellant's pleaded human rights grounds.

5. The Appellant sought permission to appeal which was granted by Upper Tribunal Judge Reeds on 6 August 2014. In granting permission to appeal Judge Reeds found that there was no arguable error under the Immigration Rules in respect of the curtailment decision, but considered that the Judge had arguably erred in failing to consider the Article 8 and EEA grounds "*when they were grounds of appeal raised by the appellant in his Section 120 notice and in the 'statement of additional grounds' and as Section 86(2) requires the Tribunal to determine any matter raised as a ground of appeal*".

6. The Respondent has filed a Rule 24 response dated 28 August 2014, which states in part:

*"Whilst the Judge should perhaps not have failed to engage with the appellant's Grounds of appeal under article 8 or the EEA regs, it is difficult to see how those grounds could be advanced at a paper hearing"*.

It was also noted in the Rule 24 response that the Appellant has since made an application for a residence card under the EEA regulations, which was refused on 8 July 2014 and in respect of which there was an appeal pending (ref IA/29714/2014).

### **Consideration**

7. For essentially the reasons identified by Judge Reeds in granting permission to appeal, I find that the First-tier Tribunal Judge was in error in failing to engage with and reach a conclusion in respect of the human rights grounds and EEA grounds raised by the Appellant. Nonetheless I also accept there is weight in the Respondent's submission to the effect that the Appellant could not likely have succeeded on such grounds on the basis of a 'paper hearing'.

8. Further, and in any event, so far as the issues in respect of the EEA regulations were concerned, these were shortly to be the subject of their own appeal. It served no real purpose to set aside the instant decision and remit this appeal for rehearing in such circumstances. Similarly, as regards any residual Article 8 issues that might remain outstanding after a consideration of EEA grounds, such matters could most conveniently be dealt with in the forthcoming appeal under reference IA/29714/2014.

9. In all such circumstances, notwithstanding the error of approach on the part of the First-tier Tribunal Judge, with reference to section 12(2)(a) of the Tribunal's, Courts and Enforcement Act 2007 I determined that it would not be appropriate to set aside the decision of the First-tier Tribunal.

#### **Notice of Decision**

10. The decision of the First-tier Tribunal contained material errors of law. However, in the very particular circumstances of this case I decline to exercise the discretion under section 12(2)(a) of the Tribunal, Courts and Enforcement Act 2007, and do not set aside the decision. The decision of the First-tier Tribunal stands.

11. The appeal is dismissed.

**Deputy Judge of the Upper Tribunal I. A. Lewis**