



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

Appeal Number: IA/03022/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4 July 2013**

**Decision Sent  
On 31 July 2013**

**Before**

**UPPER TRIBUNAL JUDGE CRAIG  
DEPUTY UPPER TRIBUNAL JUDGE APPEYARD**

**Between**

**MR AHMUD SHARIFF PEERALLY**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Gokhool, Solicitor

For the Respondent: Mr P Deller, Home Office Presenting Officer

**DECISION AND DIRECTION**

1. The appellant is a citizen of Mauritius who appealed against a decision of the respondent refusing him indefinite leave to remain in the United Kingdom outside of the Immigration Rules. His application was refused. Following a hearing on 26 April 2013 Judge of the First-tier Tribunal Kanagaratnam dismissed the appellant's subsequent appeal. In so doing he carried out a balancing exercise when considering whether the respondent's decision would lead to a breach of the appellant's Article 8 ECHR rights and concluded that it would not.
2. Permission to appeal to the Upper Tribunal was granted by Judge of the First-tier Tribunal Grant-Hutchison who decided that the judge failed to consider the respondent's decision to remove the appellant under Section

47 of the Immigration, Asylum and Nationality Act 2006 in light of the authority of **SSHD v Adamally & Jafferri UKUT 0414 IAC**.

3. The grounds though also complained that the judge made two further errors and in particular in recording that the appellant had resided in the United Kingdom only “for a mere period of three years” when the reality is that it has been nine years. Further, that the balancing exercise of the judge is inadequate.
4. In opposing the grounds seeking permission to appeal Mr Deller contended that some of the errors were not material but acknowledged that if the balancing exercise has been effected on a mistaken fact as to the length of time the appellant has been in the United Kingdom, then there are serious concerns regarding the determination.
5. We find in particular that the error in relation to the period of time the appellant has been resident in the United Kingdom is such as to infect the whole of the judge’s Article 8 balancing exercise. We also find it to be both defective and inadequate when considering the issue of proportionality and that there has been a failure to weigh all the factors in favour and against the respondent’s decision before reaching a conclusion.
6. For these reasons we set aside the First-tier Tribunal’s determination and direct that there be a new hearing where the appeal is heard afresh. In making his submissions to us Mr Deller accepted that by making the removal decision simultaneous to the immigration decision the appeal should have been allowed on that singular issue to the extent that the decision appealed against was not in accordance with the law.
7. We had hoped to proceed to hear this appeal today. Unfortunately whilst the appellant was present none of his witnesses were. It was explained to us that no direction had been made by the Tribunal to the effect that the parties should be ready to proceed in the event of a material error of law being found. We could find no such direction on the Tribunal’s file and therefore accepted the inevitability of an adjournment. In so doing we took into account the Practice Directions and concluded that the appropriate way forward was for this appeal to be remitted to the First-tier to be heard de novo.

### **DIRECTIONS**

- A. The appeal is to be heard at 10am on 17 September 2013 at the Hatton Cross Hearing Centre.

Signed

Date 16 July 2013.

Deputy Upper Tribunal Judge Appleyard