



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/05162/2014

THE IMMIGRATION ACTS

Heard at Field House
On 26th June 2014

Determination Promulgated
On 26th June 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR SAMAD ABDUL

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not Represented

For the Respondent: Mr G Saunders (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Respondent with regard to a determination of the First-tier Tribunal (Judge Fox) promulgated on 9th April 2014. For the sake of clarity and continuity however, I shall continue to refer to the Secretary of State as the Respondent and Mr Abdul as the Appellant.
2. The appeal was dealt with on the papers in the First-tier Tribunal at the Appellant's request. Similarly, there was neither attendance by the Appellant nor any representative on his behalf before me in the Upper Tribunal.

3. In the First-tier, Judge Fox noted that the Appellant had applied for leave to remain as a Tier 4 (General) Student Migrant and that his application had been refused due to a lack of sufficient funds as required by the Rules. The Judge noted that the Appellant was required to have £9,000 for 28 days but for part of the period in question the documents showed he had only £8,922.22. The Judge noted that the funds fell short by only £77.78 and considered it unreasonable to deny the Appellant the opportunity to study for that amount of money and therefore found at paragraph 15 that the Appellant met the requirements of the Immigration Rules.
4. In allowing the appeal under the Immigration Rules when he had quite clearly found that he did not meet the Rules the Judge made an error of law. Furthermore, even if the Judge had allowed the appeal on Article 8 grounds on the "near miss" principle that would also have been an error of law. It has been made clear by the Court of Appeal in Miah, Bibi and Salman v SSHD [2012] EWCA Civ 261 that there is no such thing as a "near miss" applicable to the Immigration Rules – an Appellant either meets the Rules or he does not. In this case the Appellant did not.
5. In allowing the appeal therefore the judge made an error of law which was determinative of the outcome and therefore clearly material. I therefore set aside his determination and I redecide the appeal.
6. The Appellant clearly could not meet the maintenance requirements of paragraph 245ZX (d) and therefore fails under the Immigration Rules.
7. So far as Article 8 is concerned there is no evidence that would indicate there are any arguable grounds for allowing the appeal when the Appellant does not meet the requirements of the Immigration Rules in accordance with Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 00640 (IAC) . This Appellant has been in the UK only since 2012. It is not a case where he is part-way through a course of study. He has completed one course and is seeking to start a second. Accordingly, the refusal does not represent a disproportionate breach of his private or family life.
8. The appeal to the Upper Tribunal is allowed such that the Appellant's appeal against the decision of the Secretary of State is dismissed.

Signed

Date 26th June 2014

Upper Tribunal Judge Martin