



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

Appeal Numbers: IA/13784/2014
IA/13785/2014

THE IMMIGRATION ACTS

Heard at Birmingham, Sheldon Court

**Determination
Promulgated**

On 11th September 2014

On 22nd September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**(1) MR DINESH KUMAR
(2) MRS RIVKA
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr David Mills (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Ghaffar promulgated on 10th June 2014, following the hearing at Birmingham, Sheldon Court on 3rd June 2013. In the determination, the judge dismissed the appeals of Mr Dinesh Kumar and Mrs Rivka. The Appellants subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are husband and wife. Both are citizens of India. The first Appellant, the husband, was born on 6th December 1975. The second Appellant, the wife, was born on 2nd February 1981. The first Appellant entered the UK as a Tier 4 (Student) Migrant and thereafter applied for an extension of leave. The second Appellant is his dependant. On 28th November 2013, the Respondent refused to grant further leave to remain.

The Judge's Findings

3. At the hearing before the judge on 3rd June 2013, those instructed by the Appellants, wrote to the court to advise that they were without instructions. The Appellants themselves did not attend the hearing, despite this having been an oral hearing. Nor, was there any explanation tendered. The judge had regard to the Appellants' arguments. These were that although the first Appellant did not provide a valid Confirmation of Acceptance for Studies (CAS) document which would have been issued by his sponsoring educational establishment, and despite this having been a mandatory requirement, the Respondent also requested further information.
4. The judge, however, held that, not only was there no CAS document in the papers before him, but that "no CAS document has since been submitted" (paragraph 9) so that the Appellants could simply not succeed in their appeals. No consideration was directly given to the application of Article 8.

Grounds of Application

5. The Grounds of Appeal continue to argue that the Respondent should have requested further information, namely, the Confirmation of Acceptance for Studies. However, the grounds also state that the judge failed to give any consideration to Article 8 of the European Convention of Human Rights.
6. In June 2014, permission to appeal was granted on the limited basis (but the permission having been granted the other grounds were also then deemed arguable) that, whatever the evidence before the judge, the matter should have been considered under Article 8 case law as well.
7. On 4th July 2014, a Rule 24 response was entered by the Respondent Secretary of State on the basis that "the appeal had no prospect of being successful under Article 8 of the ECHR even if the judge had been obliged to consider it".

Submissions

8. At the hearing before me there was again no attendance by the Appellants. Nor was there any explanation given for their non-attendance.
9. For his part, Mr Mills, who appeared on behalf of the Respondent Secretary of State, submitted that this appeal could not possibly succeed for the following reasons. First, in the original Grounds of Appeal before the First-

tier Tribunal Judge, all that is said is that the Secretary of State had failed to give consideration to Article 8. It was not explained what was meant by this. It was not said that Article 8 was an arguable point because the Appellants had been in the UK for any number of years. It was not said that there were children that engaged Article 8 considerations. It was not said that they had been working or enhancing their Article 8 rights in any particular way.

10. There is simply a bland statement, which is often routinely put in, that no consideration has been given to Article 8, when there were none put forward for consideration.
11. Second, if one were to give consideration to Article 8, it is clear that the Appellants only entered in February 2013 so that any argument on the basis of Article 8 was bound to fail unless there were countervailing considerations that could be raised, which have not been raised.
12. Finally, the judge would not even have been able to read anything by way of Article 8 on the basis of the papers before him. There simply was nothing upon which Article 8 could latch on.

No Error of Law

13. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside this decision. This appeal is hopeless. The Appellants, who have been shown every consideration by the appellate process, have signally failed to attend on each and every occasions, as well as having failed to put anything forward by way of a Article 8 argument, that could be realistically considered. There simply is nothing there once one accepts that an argument that further enquiries should have been made of the Appellants, after they had failed to provide a CAS, falls away. It is for the Appellant to make out an arguable case. That can only be made out by a assertion of alleged facts. No such assertion is made. All that was submitted was that the decision was not compliant with Article 8. It plainly was compliant with Article 8 because the judge determined the issue under the Immigration Rules and held that the Appellants could not succeed. The first Appellant was in this country as a student. The second Appellant was here as his dependant. Both were expected to return back to India after the end of the first appellant's studies. Reliance on human rights grounds is simply a ruse. There is no error of law here whatsoever.

Decision

14. There is no material error of law in the judge's decision. The determination stands.
15. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

20th September 2014