



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/43203/2013  
and IA/43195/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 11 November 2014

Determination Promulgated  
On 19 November 2014

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

MR FUADBIN IBRAHIM BHUYAN  
MRS NASRIN JAHAN  
(No Anonymity Direction Made)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr S Hosein a legal representative from E1 Solicitors

For the Respondent: Mr C Avery a Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellants are citizens of Bangladesh. They are husband-and-wife born on 8 December 1982 and 10 December 1990 respectively. I will refer to him as the appellant and to her as his/the wife. The appellant was given permission to appeal the determination of First-Tier Tribunal Judge Rowlands ("the FTTJ") who dismissed his appeal against the respondent's decision of 3 October 2013 to curtail his leave to remain in the UK as a Tier

- 4 (General) Student and to remove him by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. The wife was given permission to appeal the determination of the FTTJ dismissing her appeal against the respondent's decision of the same date to curtail her leave to remain in the United Kingdom as the dependent partner of a Tier 4 (General) Student and to remove her by way of similar directions.
2. The appellants appealed against these decisions and their appeals were heard by the FTTJ 10 February 2014. He dismissed both appeals under the Immigration Rules and on human rights grounds.
  3. The appellants applied for and were granted permission to appeal to the Upper Tribunal. Their appeals came before Upper Tribunal Judge Craig ("the UTJ") who, following a hearing on 20 June 2005, adjourned in order to enable the Presenting Officer to make enquiries about the circumstances leading to the refusal of the appellants' applications to establish whether there had been unfairness. The appeal came back before the UTJ on 29 September 2014 when it became apparent that further enquiries had not been made. The appeal was adjourned for the error of law hearing to take place. This came before me on 11 November 2014.
  4. Mr Avery informed me that no further enquiries had been made and no further information had emerged. The respondent's position was that there had been no unfairness and the main point in issue came down to a dispute between the appellant and his college in which the respondent played no part. The respondent's position was that there was no error of law. He provided me with the determination in Marghia (procedural fairness) [2014] UKUT 00366 (IAC).
  5. Mr Hosein based the appeal on two points. Firstly, the respondent should have given the appellant 60 days in order to find another college. Secondly, the fairness point: after the refusal by the respondent the appellant filed notice of appeal raising the 60 day point which the FTTJ should have but did not address. The closest the FTTJ got to this was in paragraph 4 of the determination. In reply to my question, Mr Hosein accepted that the grounds of appeal to the Upper Tribunal contained an extract from an unrelated and irrelevant determination which should be deleted.
  6. The chronology is as follows. On 26 March 2013 the appellant's CAS was assigned. On 27 March 2013 the appellants made their applications. These were accompanied by the CAS showing payment of the full fee of £2500. The appellant's course was due to start on 22 April 2013. He was not permitted to start this course before his application was approved. The appellant's application was approved and he received his residence card on 17 June 2013. He was granted leave for a period expiring on 25 August 2014. At this point he was entitled to start his course. On 18 June 2013 the

college informed the respondent that the appellant had failed to start studying with them. The appellant was not informed of this and he did not become aware of it until he received the curtailment letter from the respondent on 3 October 2013.

7. On 6 August 2013 the appellant was asked for and paid a £250 enrolment fee to the college. They also asked him for £500 which he did not pay because he considered that he had already paid all that had been agreed. I asked Mr Hosein whether there was any explanation for the apparent delay on the part of the appellant as to why he did not attempt to start on his course as soon as he received the residence card on 17 June 2013. It appeared that the next step he had taken in relation to the college was not until about 6 August 2013 and he had never commenced his studies. On instructions, Mr Hosein said that the appellant had tried to start on his course in August 2013 but had not done so because the College had demanded a payment which in his view they were not entitled to. The appellant relied on the authorities of Patel (revocation of sponsor licence – fairness) India [2011] UKUT 00211 (IAC) and Naved (Student – fairness – notice of points) [2012] UKUT 14 (IAC).
8. Mr Avery submitted that the appellant had misinterpreted rule 323A of the Immigration Rules (“(3) leave is to be varied such that when the variation takes effect the migrant will have leave to enter or remain and the migrant has less than 60 days extant leave remaining”). Firstly, this did not cover the appellant’s situation and secondly, it did not require the respondent to give any additional period, merely gave her a discretion to do so.
9. Mr Avery argued that neither the grounds of appeal nor the submissions identified any error of law. There was no explanation for the fact that the appellant had not attempted to start his course between June and August 2013. The problems were between the appellant and the college and did not involve the respondent. The respondent was entitled to assume that the notice from the college that the appellant had not started his course was correct and she had no responsibility to make further enquiries. The respondent had not been responsible for any unfairness to the appellant. There was nothing to impose any obligation on her which she had not met. I was asked to find that there was no error of law and to uphold the determination.
10. I reserved my determination.
11. I find that the FTTJ was generous to the appellant in concluding that he tried to register at the college in June 2013 (paragraph 11). On my reading of the evidence he did not attempt to do so until early August 2013. The sentence in the appellant’s witness statement that “after that I could possibly go to the college on 18/6/2013, which I went” does not in my

view provide any clear indication that he was claiming to have gone to the college at any time between receiving approval from the respondent and early August 2013. There is no indication that he did so anywhere else in his evidence. However, I will assume that the FTTJ was correct in concluding that the appellant went to the college to register in June 2013 in considering whether there is any error of law.

12. Paragraph 323A of the Immigration Rules does not assist the appellant. It deals with variation of leave, not curtailment. The appellant's course was due to start on 22 April 2013. If he had not commenced his studies by 18 June 2013 it is not surprising that the college informed the respondent that he had failed to start studying with them. It is not clear what action, if any, the appellant took in relation to the college between attempting to register in June and early August when the college asked him for more money. He paid an enrolment fee of £250 but it is not clear why he was asked for a further £500 and whether the college was or was not entitled to this. This was a dispute between the appellant and the college in which the respondent played no part.
13. The FTTJ was entitled to conclude that there was no unfairness and that the respondent was under no obligation to give him a further period, of 60 days or any other period, in which to find another college. Whilst the FTTJ did not refer to 60 days I find that the reference to "should have been given further time" in paragraph 11 is a sufficient indication that the FTTJ addressed the point. The appellant's evidence was that he had made no effort to find somewhere else to study. The FTTJ was also entitled to conclude that there was no unfairness because the respondent took from about 27 March 2013 when the applications were made to 17 June 2013 to determine them.
14. I have not been asked to make an anonymity direction and can see no good reason to do so.
15. I find that there is no error of law and I uphold the decision of the FTTJ

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Signed  
Upper Tribunal Judge Moulden

Date 14 November 2014