



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/52610/2013**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On October 28, 2014**

**Decision Promulgated
On October 30, 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR SHAHZAD KHAN

Respondent

Representation:

For the Appellant: Mr Tarlow (Home Office Presenting Officer)

For the Respondent: Unrepresented

DETERMINATION AND REASONS

1. Whereas the respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellant, born January 1, 1988 is a citizen of Pakistan. On February 7, 2011 he was granted leave to enter the United Kingdom as a Tier 4 student until February 29, 2012. This leave was extended until July 7, 2014 but on May 14, 2013 he was given notice that his leave would be curtailed as at July 13, 2013. due to the fact his Sponsor was no longer acceptable. On May 23, 2013 he submitted his application and at page 37 of the application form he stated he would provide his Confirmation of

Acceptance for Studies (CAS) "later on". He was not issued with this document until August 15, 2013.

3. The respondent refused his application on November 20, 2013 and at the same time a decision to remove under section 47 of the Immigration, Asylum and Nationality Act 2006 (as amended) was taken.
4. On December 10, 2013 the appellant appealed under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 arguing the application should have been allowed under the Immigration rules and article 8 ECHR.
5. The matter was listed before Judge of the First-tier Tribunal Fox (hereinafter referred to as "the FtTJ") on June 24, 2014. In a determination promulgated on July 16, 2014 he remitted the decision back to the respondent and made no decision on article 8 ECHR.
6. The respondent appealed that decision on July 16, 2014. Permission to appeal was granted by Judge of the First-tier Tribunal Hollingsworth on September 11, 2014. He found the FtTJ may have erred for the reasons set out in the respondent's grounds.
7. The appellant was in attendance at the hearing. He was no longer represented.

SUBMISSIONS ON ERROR OF LAW

8. Mr Tarlow adopted the grounds of appeal and submitted the FtTJ had erred because the respondent was under no obligation to request information when the appellant himself has clearly stated there was no such document. The document concerned only came into existence on August 15, 2013 which was of course after his leave expired, in any event. If there was an error I was invited to dismiss the appeal under both the Immigration Rules and article 8, if appropriate.
9. Mr Khan argued that it was not his fault that his sponsor was no longer trusted and he had not had sufficient time to pass a required English exam and obtain his CAS although he emphasised, more than once, that he intended to return to Pakistan as soon as he finished his course in January 2015.

ASSESSMENT OF ERROR IN LAW.

10. The FtTJ found at paragraph [29] that no valid CAS had been provided and his appeal must fail. That should have been the end of the matter but the FtTJ considered case law and incorrectly applied the law.

11. The FtJ applied Khatel and others (Section 85A:effect of continuing application) [2013] UKUT 00044 when he should have applied the Court of appeal decision of Raju, Khatel and Others v SSHD [2013] EWCA Civ 754 in which the Court of Appeal made it clear that AQ (Pakistan) v SSHD [2011] EWCA Civ 833 was "not authority for the proposition... that applications were "made" throughout the period starting with the date of their submission and finishing with the date of the decisions". The date of the application is governed by Rule 37 of the Immigration Rules. Paragraph 34G precluded the concept of a 'continuing application' which started when it was first submitted and concluded at the date of the decision either of the Secretary of State or, on appeal, of a Tribunal.
12. The fact the Court of Appeal had overturned the original Khatel decision was something he should have taken judicial notice of. Consequently, there was no legal basis to return the application to the respondent and his decision contains a material error.
13. I have remade the decision and having taken into account the FtJ found the appellant did not meet the Rules I dismiss the appeal under the Immigration Rules.
14. In respect of article 8 ECHR the Immigration Rules set out article 8 ECHR and whilst the appellant has extended family here his family remains in Pakistan and his private life amounts to his studies here. He does not meet the requirements of either Appendix FM or paragraph 276ADE HC 395.
15. As the appellant has not met the Immigration Rules I have to consider whether there are any exceptional or compelling circumstances that would make removal unjustifiably harsh. I have applied the approach set out in R (Nagre) v SSHD [2013] EWHC 720 (Admin); MF (Nigeria) v SSHD [2013] EWCA Civ 1192; Gulshan (Article 8 - New Rules - Correct Approach) [2013] UKUT 00640 (IAC); Shahzad (Article 8: legitimate aim) [2014] UKUT 00085 (IAC) and MM (Lebanon) & Ors, R (on the application of) v Secretary of State for the Home Department & Anor [2014] EWCA Civ 985)).
16. I am dealing with an appellant who could meet the Rules if he had provided the correct documentation. In Nasim and others (Article 8) [2014] UKUT 00025 (IAC) the Tribunal stated at paragraphs [20] to [21]

20. We therefore agree with Mr Jarvis that [57] of Patel and Others is a significant exhortation from the Supreme Court to re-focus attention on the nature and purpose of Article 8 and, in particular, to recognise its limited utility to an individual where one has moved along the continuum, from that Article's core area of operation towards what might be described as its fuzzy penumbra.

The limitation arises, both from what will at that point normally be the tangential effect on the individual of the proposed interference and from the fact that, unless there are particular reasons to reduce the public interest of enforcing immigration controls, that interest will consequently prevail in striking the proportionality balance (even assuming that stage is reached).

21. In conclusion on this first general matter, we find that the nature of the right asserted by each of the appellants, based on their desire, as former students, to undertake a period of post-study work in the United Kingdom, lies at the outer reaches of cases requiring an affirmative answer to the second of the five "Razgar" questions and that, even if such an affirmative answer needs to be given, the issue of proportionality is to be resolved decisively in favour of the respondent, by reference to her functions as the guardian of the system of immigration controls, entrusted to her by Parliament."

17. The appellant had time to submit his application. He took no steps to seek additional time and he failed to meet the Rules. Whilst I acknowledge his course is due to end in January 2015 and he has incurred costs there is nothing exceptional or compelling that would make removal unjustifiably harsh. It is of course open to him to seek entry clearance to complete his course but I find no basis to allow this appeal under article 8 ECHR.

DECISION

18. There is a material error of law and I set aside the decision. I remake the decision and dismiss the appeal under the Immigration Rules and article 8 ECHR.
19. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Deputy Upper Tribunal Judge Alis

Dated: **October 28, 2014**

TO THE RESPONDENT

I do not alter the decision to make no fee award.

Signed:

Deputy Upper Tribunal Judge Alis

Dated: **October 28, 2014**