



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

Appeal Number: IA/01791/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 29 January 2015**

**Decision & Reasons  
Promulgated  
On 5 March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GIBB**

**Between**

**SUJANUZZAMAN KHAN  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms M Ahammed, of RMS Immigration Limited

For the Respondent: Mr C Avery, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a citizen of Bangladesh, had been in the UK, with leave, as a student. In 2013 the appellant made a human rights application, apparently as a variation of an outstanding application for further leave as a student. The human rights application was refused by notice dated 17 June 2013.

2. An appeal against this decision was considered at a hearing at Hatton Cross, on 19 June 2014, before First-tier Tribunal Judge Robinson. The appellant was represented, but did not attend the hearing for health reasons. In a determination promulgated on 3 July 2014 the judge found that there was no valid appeal before the Tribunal.
3. Permission to appeal was initially not admitted, by First-tier Tribunal Judge P J M Hollingworth, on 28 August 2014. On 5 December 2014, however, permission to appeal was granted by Upper Tribunal Judge Peter Lane. In relation to the jurisdiction issue the Upper Tribunal Judge commented as follows:

“The appellant has adduced evidence that he posted (and therefore made) the application for further leave on 1 June 2012, which was within the currency of his previous leave. If that application was properly varied, then it is arguable the decision to refuse to grant leave to remain fell in law to be treated not as an unappealable decision to refuse to grant leave to remain, but as an appealable decision to refuse to vary leave to remain: see **Basnet [2012] UKUT 113 (IAC)** and **Ved [2014] UKUT 150.**”

4. Upper Tribunal Judge Lane went on, however, to warn the appellant as follows:

“The appellant must, however, be prepared at the hearing to explain why, even if he had a right of appeal, his human rights are such as to compel the respondent to grant him leave.”

5. At the start of the error of law hearing I raised with the appellant’s representative, following on from this warning, what evidence there would have been to form the basis for the judge, or any judge, to have allowed the appeal on Article 8 grounds. I drew the attention of both parties to the appellant’s witness statement. This had two short paragraphs (paragraphs 4 and 7) that could be relevant to Article 8. Paragraph 4 consisted of the appellant’s contention that he was well-established in the UK and had no meaningful social, cultural, or family ties to his country of origin; but without offering any supporting detail. Paragraph 7 consisted of a single sentence, stating that he had established a private life in the UK in the time that he had been here, and that he had social connections in the UK; again without offering any detail.
6. There was a handwritten addition to paragraph 7 on the witness statement, but the appellant’s representative confirmed that this had been added in January 2015. It referred to the fact that the appellant had an aunt and her family in the UK.
7. Mr Avery, for the respondent, accepted that the judge had been wrong to say that there was no right of appeal for the reason that he gave, but

raised a separate point, apparently not raised previously, as to whether the appeal to the First-tier Tribunal had been out of time.

8. Ms Ahammed, for the appellant, pointed to the fact that the appellant had been studying for more than four years, that he had not been able to study the course that he wanted to do, that every case should be considered separately, and that the refusal had not properly considered paragraph 276ADE of the Immigration Rules.

### **Error of Law**

9. As was agreed at the hearing I find that the judge did err in law in his approach to the issue of whether the decision was an appealable one. The decision that there was no valid appeal before the Tribunal must therefore be set aside.
10. If the error as to validity had not been made, however, the judge could not possibly have allowed the appeal on human rights grounds on the basis of the evidence presented. The appellant was not present at the hearing and there was no oral evidence. The only references in the witness statement are those referred to above. These were entirely and obviously inadequate as an evidential basis for any findings that could even potentially lead to an arguable basis for allowing an appeal of this sort on Article 8 grounds. As I pointed out to Ms Ahammed at the hearing reliance can no longer be placed on the **CDS (Brazil)** case, following the Supreme Court case of **Patel**. It may be the case that the door to pleading Article 8 in student cases cannot be said to be shut entirely, but what is clear is that what would be needed would be some significant evidence of family or private life interference, that could then be connected to the other issues. In this case paragraphs 4 and 7 of the witness statement fall so far short of evidence of this sort that there would not even have been an arguable Article 8 case for the judge to address; and that remains the case.
11. Ms Ahammed referred to the fact that paragraph 276ADE had not been properly considered. Reference was made to paragraph 276ADE(vi), which was concerned with adults who had been in the UK for less than twenty years but had no ties to their country of origin. The same point about evidence applies. Even if paragraph 276ADE had been given full and proper consideration there would have been nothing to say about it, other than that the evidence presented fell woefully short of anything that could be said to establish that the appellant had no remaining ties to Bangladesh.
12. Before the First-tier, and before me, Article 8 was the only matter being argued. No other issues relating to fairness, or to the Immigration Rules, connected to the appellant's history as a student were put forward. On remaking the decision, therefore, the appeal falls to be dismissed because there was, and is, no evidence that could be said to form the basis for any

arguable case under paragraph 276ADE, or in relation to Article 8 outside the Rules.

13. It was not suggested that there was any need for anonymity in this appeal and I make no such order. The appeal on remaking being dismissed there is no basis for any fee award.

**Notice of Decision**

14. The appeal to the Upper Tribunal is allowed only to the extent that the decision that there was no valid appeal is set aside. The decision in the appeal is remade as follows.

15. The appeal is dismissed on human rights grounds.

Signed

Date 03/03/2015

Deputy Upper Tribunal Judge Gibb