



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

Appeal Number: IA/23594/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 7 April 2015**

**Decision & Reasons Promulgated
On 17 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**MR TANWEER SUBHANI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Ms Brocklesby-Weller, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 3 August 1982. On 17 April 2014 he applied for an extension of stay in the United Kingdom as a student having first entered in that capacity for an IELTS preparation course in July 2011 and subsequently studying for a BTEC HNC in business management. The completion date for that course was 19 December 2013. He had leave until 19 April 2014 for that purpose.

2. He subsequently made application to remain to study at University Tutorial College for a health and social care management NQF level 5 qualification which was refused on 9 May 2014. The application was refused in a decision of the respondent dated 9 May 2014. Initially, no right of appeal was given but in the event, the appeal before Judge Wiseman (the judge) proceeded on human rights grounds on the basis that the refusal was a breach of the appellant's right to private life. The judge found that the appellant's application breached the requirement that prohibited the appellant from being allowed to study here for more than three years below degree level. The judge went on to consider Article 8 but given that he found the appellant had not put forward any relevant circumstances in that regard the appeal was dismissed on human rights grounds and under the Immigration Rules.
3. The grounds claimed the judge had failed to deal with Section 88(4) as it was a ground of appeal that the decision was a breach of the appellant's human rights on the basis that the respondent's decision was not in accordance with the Notices Regulations 2003. In particular inter alia, as the claim was said to be unlawful under Section 6 of the Human Rights Act (see (7)(b) and (c)) the decision maker had an obligation to re-serve the notice of the decision under Regulation 4. The appellant took issue with the procedure followed by the respondent such that the grounds claimed the decision was not in accordance with the law and therefore failed the third **Razgar** question in terms of the lawfulness of the decision. That is, the appellant was entitled to a fully appealable decision, regarding which the judge failed to engage so as to resolve the issue.
4. Further, the grounds claim the judge failed to impose the correct burden and standard of proof. That was because the judge placed the burden upon the appellant to show that the respondent's calculations as to the three year period were in error. The timing of the appellant's various CAS dates were unclear. The appellant could not show the respondent's calculations were in error because those calculations had not been published or made available to the appellant. The grounds claim that as a minimum, the respondent should have disclosed the calculations used to decide that the appellant's current course of study would take him over the three year cap and the failure to do so and the failure on the part of the judge to engage with the same rendered the decision as "not in accordance with the law". The appellant could not raise the "not in accordance with the law ground" except through the prism of human rights, hence the purpose of the Notice Regulations.
5. Further, the grounds claimed that the judge had no power to dismiss the appeal under the Immigration Rules as the appellant did not have a right of appeal. It was claimed that the appellant had made no proper submissions in that regard as he had no right of appeal against that aspect of the decision such that the judge should have restricted himself to the decision-making powers in s86(3) of the NIA 2002. That would have made a crucial difference to the appeal. The judge should have recognised that the decision was not in accordance with the law which was relevant to the human rights ground.

6. Judge Grimmett considered the grounds but found there was no arguable error of law. Whilst the grounds claimed the judge failed to deal with s88(4) he considered human rights at [14] and [15]. The grounds claimed that the respondent's decision was not in accordance with the Immigration (Notices) Regulations 2003 but Judge Grimmett could not see that Regulation 4 referred to in the grounds included a [6].
7. The grounds were renewed. Judge Eshun in a decision dated 5 February 2015 granted permission to appeal on the papers as follows:

"The respondent refused the appellant's application for leave to remain as a Tier 4 (General) Student on 9 May 2014 without a right of appeal under S.88(2)(c) of the 2002 Act. According to the grounds the appellant is claiming that the procedure adopted by the respondent was not in accordance with the law and therefore the respondent's decision is contrary to the Human Rights Convention. The appellant relies on **CHH (Notices Regulations - right of appeal - leave to remain) Jamaica [2011] UKUT 00121 (IAC)**, and argues that he is entitled to a fully appealable decision. The grounds argue that the judge failed to consider this argument and consequently erred in law. The grounds raise an arguable error of law."

8. Thus the matter came before me.
9. Turpin & Miller wrote to the Upper Tribunal on 12 March 2015 saying they were instructed that the appellant wished the Upper Tribunal to determine his appeal on the basis of the grounds submitted in support of the original application for permission. No additional grounds were submitted. Turpin & Miller said that the appellant would not be attending the appeal in person or through a representative.
10. The respondent's Rule 24 letter dated 16 February 2015 submitted that the judge had directed himself appropriately and had not erred. The appellant had no right of appeal under the Immigration Rules. As regards human rights, the judge had considered those at [14] and [15] of his determination. The appellant's circumstances could be distinguished from those in **CHH**.

Conclusion on Error of Law

11. The appellant's circumstances can be distinguished from those in **CHH** which was an out of time appeal. See [4]-[5] of **CHH**. That case involved a one year gap and various correspondence between the parties. It may be that the respondent in this appellant's case failed to re-serve the notice of decision under Regulation 4 of the Immigration (Notices) Regulations 2003, however, the appellant suffered no prejudice in that regard as he lodged his grounds of appeal in time and included a human rights appeal at section 3 "Non-asylum Decision".
12. It was not in dispute that the appellant was only able to appeal on the restricted human rights grounds and the judge erred in considering the appellant's position under the Immigration Rules although I do not find that to be material. The judge considered human rights at [14]-[15] of the determination. He found that "...in real terms...", no Article 8 claim had "...been properly put forward..." by the appellant. The judge commented that the dismissal of the appeal on human rights grounds was

inevitable on the basis of the evidence before him. Put simply, the appellant had failed to make out any private life in the United Kingdom before the judge and I find the Notice Regulations had no material bearing. That was because he made an in time appeal and raised human rights which the judge considered and dismissed.

13. In summary, I conclude that the determination does not contain a material error of law, such that the decision of the First-tier Tribunal should be set aside.

Decision

14. The decision of the First-tier Tribunal contains no error of law and shall stand.

Anonymity direction not made.

Signed

Date 7 April 2015

Deputy Upper Tribunal Judge Peart