



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

Appeal Number: IA/27963/2013

THE IMMIGRATION ACTS

Heard at Field House

On 20 January 2015

**Determination
Promulgated**

On 28 January 2015

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**MUHAMMAD ADEEL BASHIR
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Lemer of Counsel

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the determination of First-tier Tribunal Judge M A Khan promulgated on 24 June 2014 in which he dismissed the appellant's appeal against the decision of the Secretary of State made on 26 June 2013 to curtail his leave to remain in the United Kingdom pursuant to paragraph 323A(a)(ii)1) and 323(ii) of the Immigration Rules. The decision was also taken to set removal directions

against the appellant under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The Secretary of State's case is set out in the refusal letter of 26 June 2013 and it recites the appellant was granted leave to remain as a Tier 4 (General) Student until 17 February 2015 in order to undertake a course of study at Access London College. On 25 June 2013, the respondent curtailed his leave with immediate effect on the basis that the appellant had not commenced his studies, and that she had been informed of that in a letter from the college. The appellant disputes that any such letter had been sent; the respondent has yet to produce a copy of it.
3. The matter was first appealed and came before First-tier Tribunal Judge Pears on 22 January 2014. The appellant successfully appealed that decision to the Upper Tribunal. The matter came before Judge Alis after I had granted permission on 26 March 2014. Judge Alis allowed the appeal to the extent that it was remitted to the First-tier for a fresh decision. It was on that basis that the decision came before Judge M A Khan. The appellant appealed against that decision on the basis that the judge had erred in that he had reversed the burden of proof, in effect requiring the appellant to prove that he had commenced studies, it being submitted that was contrary to the law set out in **JC (China)** [2007] UKAIT 27 and that in any event the respondent had failed to provide the relevant document, that is a letter from Access College which is mentioned in the refusal letter as evidence.
4. By chance the matter came before me upon further application for permission to appeal to the Upper Tribunal and on 1 October 2014 I granted permission to appeal stating that it was arguable that Judge Khan had erred in law in requiring the appellant to show he had commenced studying at the relevant college. It was arguably for the respondent to prove that was so pursuant to paragraph 323.
5. When the matter came before me Mr Lemer relied on the grounds submitting that the point in this case was narrow. Mr Walker for the Secretary of State did not resist this challenge with any strength and I am satisfied having regard to the submissions of both representatives that the decision of the First-tier Tribunal did involve the making of an error of law in that Judge Khan in his determination in his determination in effect placed the burden on the appellant to show that he had not commenced his course when, as is established law, it is for the respondent to demonstrate that the requirements of paragraphs 323 are met..
6. At paragraph 34 the judge said

“The respondent's case is that the Access London College informed him on 31 May that the appellant had failed to commence his studies with them. The appellant states that he attended the Access London College for about a month after he was granted an extension of his leave to remain. He decided that because the respondent has failed

to adduce the college's letter as evidence the decision to curtail the appellant's leave is not in accordance with the law. The appellant has not produced any evidence that he actually commenced his course of study."

7. I am satisfied that this was in effect a reversal of the burden of proof and for that reason the decision is set aside. I consider that this is an appropriate case for me to remake in the Upper Tribunal given that the issues are narrow.
8. Mr Walker accepted the Secretary of State is still not in a position to adduce the letter which it is said indicates that the appellant had not commenced studies, that being the sole basis on which curtailment of leave is justified.
9. Having had regard to this and having had regard to the evidence which was before the First-tier on both occasions I consider that the Secretary of State has not proved to the civil standard of proof applicable in this case that the appellant's leave fell to be curtailed on the basis of his failure to commence studies. On that basis I allow the appeal.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside. I remake it by allowing the appeal under the immigration rules.

Signed

Date: 27 January 2015

Upper Tribunal Judge Rintoul

TO THE RESPONDENT FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable as this is a case given the failure of the respondent to provide any evidence supportive of her case which has resulted in unnecessary appeals. .

Signed

Date: 27 January 2015

Upper Tribunal Judge Rintoul