



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

Appeal Number: IA/35567/2014

THE IMMIGRATION ACTS

Heard at Manchester Upper Tribunal

Decision & Reasons

On 7th October 2015

Promulgated

On 11th December 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR S P

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In Person

For the Respondent: Miss C Johnstone, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of India born on 2nd May 1988. On 4th October 2010 the Appellant was granted leave to enter the United Kingdom as a Tier 4 (General) Student until 9th January 2012. On 9th January 2012 the Appellant made a combined application for leave to remain as a Tier 1 (Post-Study Work) Migrant under the points-based system and for a biometric residence permit. That application was refused on 22nd August 2014 on the grounds that the Appellant did not meet the requirements of Appendix A in particular that the Appellant had produced a qualification by

way of a certificate of membership of Cranfield University and that that qualification was not recognised as a bachelors/postgraduate degree and that as specified in the published guidance and Appendix A of the Immigration Rules where an applicant under Tier 1 (Post-Study Work) is not awarded points for an eligible qualification the Secretary of State is unable to award points in any of the other point scoring areas for Attributes.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Grimmatt sitting at Birmingham on 8th January 2015. In a determination promulgated on 19th January 2015 the Appellant's appeal was dismissed under the Immigration Rules and pursuant to Article 8 of the European Convention of Human Rights.
3. On 2nd February 2015 the Appellant lodged Grounds of Appeal to the Upper Tribunal. Those Grounds of Appeal acknowledge at paragraph 10 that the Appellant cannot succeed under the Immigration Rules as a Tier 1 (Post-Study Work) Migrant as he is unable to show that he has been awarded a UK recognised bachelors or postgraduate degree. At paragraph 11 of the Grounds of Appeal it is contended that the decision clearly failed to properly consider the Appellant's rights under Article 8 and the unique circumstances of his case and that it is contended that his appeal should have been allowed under Article 8 in order for the Appellant to register and complete his flying exams. It was also submitted this wish to qualify as a pilot is a part of his private life and it was the unlawful act of the Respondent in detaining him whilst he still had an outstanding appeal that has refrained him from being qualified. It is contended that had the Respondent not unlawfully detained the Appellant he would have completed his studies by now.
4. On 11th March 2015 Judge of the First-tier Tribunal PJM Hollingworth granted permission to appeal. Judge Hollingworth considered that an arguable error of law had arisen in respect of the weight to be attached to the inability of the Appellant to take his pilot's licence at a time when an appeal was outstanding but he had been detained. It was noted that the Appellant was without his passport and that it was arguable that greater weight should be attached to the pursuit of private life in the Appellant's circumstances given the actions of the Respondent.
5. On 23rd March 2015 the Secretary of State responded to the Grounds of Appeal under Rule 24. The Rule 24 response note that the grounds argue that greater weight should be attached to the private life argument as the Secretary of State had detained the Appellant and thus he was not able to sit an examination. However the Rule 24 response submits that given that the Appellant was not in the UK to pursue a pilot's licence and he only undertook this course whilst awaiting for the Secretary of State's decision on another matter it is argued that it would be irrational to find a material error in the determination of Judge Grimmatt especially as the Appellant is pursuing damages for wrongful imprisonment.

6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer Miss Johnstone. The Appellant appears in person. He has served a small bundle of documents which I have given due consideration to. This consists of a skeleton argument, a witness statement dated 7th October 2015 and a copy of correspondence with the government legal department relating to the Appellant's claim for unlawful detention being pursued in the Central London County Court. I fully explained to the Appellant, who is an intelligent man that the issues before me were purely to determine whether there was a material error of law in the decision of the First-tier Tribunal. Miss Johnstone generously indicated that she would have no objection to my taking into account documents provided by the Appellant even though I was not taking evidence by way of a rehearing of this matter.

Submissions/Discussions

7. The Appellant's appeal is purely based on consideration of his Article 8 rights. He considers that at a time when he was lawfully residing in this country he had to wait 26 months for his application to be processed. He acknowledges that had the Secretary of State first refused his application and then detained him thus preventing him from completing his exams the contentions of the First-tier Tribunal Judge would have been understandable but he contends that the unlawful interference took place prior to the applications being refused which was some two months later. Further had his passport been returned he would have been well established in his career outside the UK by now. This was acknowledged by Judge Grimmett in his determination. The Appellant states that he was due to take his final examinations on 7th July 2014 and a week prior to this he was arrested. As a result he will have to retake all his examinations and he will need another training organisation to enable him to go through his course. He advises there were fourteen examinations in all held twice a month and that he had completed nine and had five left to take. He states that realistically he needs a further six to eight months' leave in the UK in order to do so.
8. In response Miss Johnstone states that none of these facts appear to have been before the First-tier Tribunal so far as any submissions are made with regard to his grant for a private life. She refers me to Judge Grimmett's determination in particular to paragraph 6 pointing out that discretionary leave is a matter for the Secretary of State alone and not for the Tribunal and emphasising therein Judge Grimmett's comments at paragraph 7 that prior to removal the Secretary of State should take such steps that are necessary in the particular circumstances to allow the Appellant to undertake his examinations which were prevented by what appears to have been unlawful means on the part of the Secretary of State. It was because of the unlawful arrest and the Appellant's understandable desire to ensure his detention is not widely known as it may affect his future career that Judge Grimmett quite properly made an anonymity order.

Independent Submission by the Appellant

9. I invited the Appellant as he was a litigant in person albeit that he had enjoined in the submissions/discussion if there was anything he specifically wished to state to me then I would hear him without interruption. He responded that the First-tier Tribunal Judge did ask for evidence of his study and he provided all the relevant evidence at the hearing and evidence of his examinations that were taken. He states that if given leave he would be given back his passport and that he could therefore take his exams. He does not wish to remain unnecessarily in this country. He just wants to qualify. He has a girlfriend in Norway and he wishes to be able to get on with his career. He asked me to look sympathetically at his appeal.

The Law

10. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

12. I start by reminding myself that the issue before me is to determine whether or not there is a material error of law in the decision of the First-tier Tribunal. From time to time in this Tribunal cases appear before judges where their sympathies may well be entirely with an Appellant but we are constrained by the Rules to apply the law even if that means the result is disappointing for an Appellant. The proper question for the Judge to apply was, "Was it correct to apply the Immigration Rules?" Judge Grimmett found that it was correct for her to do so and I agree with that decision. It is not open for the Judge to go considering the matter outside

the Rules unless there are compelling circumstances and there were no compelling circumstances before the Judge. Consequently there is no material error of law in the decision of the First-tier Tribunal Judge. I consequently cannot overturn that decision.

13. However within this determination I would wish to give the strongest direction so far as I am able to the Secretary of State. Effectively I am repeating what has been said by Judge Grimmett at paragraphs 6 and 7 of her determination. I am aware that there are civil proceedings pending in the Central London County Court and indeed the consequence of those proceedings may be far reaching. Whilst I have only had the briefest of detail and only heard one side of the story if the Appellant's contentions are sustained then the actions of the Secretary of State have effectively deprived him of his career or at least set it back for a considerable period of time. I appreciate that these proceedings were not a matter that were before the First-tier Tribunal and indeed I note that the Appellant was represented by Counsel before the First-tier Tribunal. Consequently whilst there is no material error of law in the decision of the First-tier Tribunal Judge and that the Judge was correct to find that discretionary leave is a matter for the Secretary of State alone, bearing in mind the particular circumstances of this case there must be considerable merit in dialogue being entered into between the Appellant and his legal representatives and the Secretary of State to try and ensure that a way forward can be negotiated to enable him to take his examinations. This will enable the Appellant to pursue his career and on his own oral testimony he does not wish to remain in the UK and that he wishes to work either in the Middle East or Asia.
14. Consequently for all the above reasons the determination of the First-tier Tribunal Judge discloses no material error of law. Whilst I am extremely sympathetic to the position in which the Appellant finds himself, his appeal is dismissed and the decision of the Secretary of State is maintained.
15. For obvious reasons the anonymity order of the First-tier Tribunal Judge is maintained.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 30th November 2015

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed

Date: 30th November 2015

Deputy Upper Tribunal Judge D N Harris