



IAC-FH-AR-V1

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

Appeal Number: IA/36902/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17 August 2015**

**Decision & Reasons Promulgated  
On 23 September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**KIRTANKUMAR THAKORBHAI PATEL  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Rai, Counsel (Direct Access)

For the Respondent: Miss A Everett, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of India born on 3 August 1980 and on 14 June 2014 he made a combined application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under the points-based system (PBS) and that application was refused by the Secretary of State on 5 September 2014 on the basis that he had failed to provide a CAS reference number with his application, contrary to Paragraph 245ZX (c) with reference to Paragraph 115A of Appendix A and Paragraph 245ZX (d) of the Immigration Rules. The Secretary of State was not satisfied that he had a valid Confirmation of Acceptance for Studies.

2. The application was determined on the papers by First-tier Tribunal Judge Hanes on 12 January 2015 and Judge Hanes dismissed the appeal both under the Immigration Rules and on human rights grounds.
3. An application for permission to appeal was made on the basis that it was argued that the judge had not considered whether there would be a breach in the light of the **Razgar v SSHD [2004] UKHL 27** criteria.
4. Application for permission to appeal was granted by P J M Hollingworth as the judge had applied **Gulshan v Secretary of State for the Home Department [2013] UKUT 00640** and not considered **Razgar**.
5. Before me, Mr Rai argued that the statement of grounds in the notice of appeal submitted by the solicitors to the First-tier Tribunal referred to difficulties that the appellant had had with taking an English test and therefore supplying a valid CAS. There was no assertion that the appellant could have complied with the Immigration Rules and it was accepted that he could not do so because of a failure to provide a valid CAS.
6. Despite reference in the grounds of appeal to an email referring to difficulties with the English test there was no confirmation that the email referred to was attached to the statement of grounds. There was no reference to an email within the decision. The statement of grounds, accompanying the notice of appeal and before the judge, spelled out that he needed his passport to sit the exams but could not do so as he could not provide the passport. In essence the appellant accepted that he could not provide a valid CAS and thus his application was bound to fail under the Rules.
7. The appellant, however, also stated in his notice of appeal:

“I have spent all the money available to me on my studies. I took huge amounts of loans from people I knew back in India to enable me to complete my education in the UK”.
8. I am not persuaded there is any error of law in this decision.
9. It is clear that the appellant could not comply with the Immigration Rules and it was also clear that he has no family life in the UK and the judge so records at paragraph 9. I note the judge does make reference to **Gulshan v Secretary of State for the Home Department [2013] UKUT 00640** and considered whether there were any compelling circumstances and ultimately found that there were no arguably good grounds for granting leave to remain outside the Rules but he did go on to also consider **Nasim and Others (Article 8) [2014] UKUT 25 (IAC)** and **Patel and Others v Secretary of State for the Home Department [2013] UKSC 72**. The judge identified that those cases served to re-focus attention on the nature and purpose of article 8 and to recognise its limited utility in private life cases that are far removed from the protection of an individual’s moral and physical integrity.
10. There was understanding by the judge that the appellant had entered the UK on 15 September 2009 at the age of nearly 30 years old. There was no indication of any family life and as indicated in **Nasim** and **Patel** and as recorded at paragraph 10 by the judge

“It was stated that the education is not in itself a right protected under Article 8. A person's human rights are not enhanced by not committing criminal offences or not relying on public funds.”

11. A further recitation of **Patel** reads as follows

“57 It is important to remember that article 8 is not a general dispensing power. It is to be distinguished from the Secretary of State’s discretion to allow leave to remain outside the rules, which may be unrelated to any protected human right. The merits of a decision not to depart from the rules are not reviewable on appeal: section 86(6). One may sympathise with Sedley LJ’s call in Pankina for “common sense” in the application of the rules to graduates who have been studying in the UK for some years (see para 47 above). However, such considerations do not by themselves provide grounds of appeal under article 8, which is concerned with private or family life, not education as such. The opportunity for a promising student to complete his course in this country, however desirable in general terms, is not in itself a right protected under article 8.”

12. At paragraph 62 of **Singh v SSHD [2015] EWCA Civ 74** in the approach to Article 8 it was asserted that

‘But what matters is that there is nothing in Aikens LJ’s comment which casts doubt on Sales J’s basic point that there is no need to conduct a full separate examination of article 8 outside the Rules where, in the circumstances of a particular case, all the issues have been addressed in the consideration under the Rules.

13. In the overall circumstances of this appeal I am not persuaded that there was any information put before the judge save for that included in the statement of grounds and no information with regard to any family life or any further considerations to take into account save that the appellant had expended a great deal of money. In other words there were no factors which had not been taken into account by the respondent such that further consideration indicated an engagement of Article 8. Thus the judge cannot be criticised with respect to his use of **Gulshan**. There was no material error of law.

14. Whilst sympathy must be afforded to the appellant if he has failed to complete his educational studies it was open to him to obtain his ESOL results before his visa expired which he did not and he has not placed any evidence of any persuasive circumstances such that the protection of his “individual moral and physical integrity” is affected in this case.

15. I find no material error of law and the decision shall stand.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Rimington