



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

Appeal Number: IA/40587/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 26 February 2015**

**Decision & Reasons
Promulgated
On 9 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR MOHAMMED JAHANGIR ALAM
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms J Isherwood, Home Office Presenting Officer
For the Respondent: No Appearance

DECISION AND REASONS

Introduction

1. This is an appeal by the Secretary of State against the decision of Judge of the First-tier Tribunal Greasley promulgated on 21 November 2014. The appellant is a male Bangladeshi born on 7 January 1980. He came to the UK for the first time on 7 June 2011 with leave to enter as a Tier 4 (General) Student from 15 May 2011 to 12 April 2013. The present application, the decision in relation to which stimulated the present set of appeal proceedings, was an application for further leave to remain made on 12 April 2013 under the points-based scheme, again as a Tier 4 (General) Student Migrant. This resulted in a refusal by the Secretary of

State on 20 September 2013 when she pointed out that the appellant failed to qualify under the points-based scheme because he did not achieve the necessary number of points for certain of the required attributes.

2. The appellant subsequently appealed that decision and the matter came before Judge of the First-tier Tribunal Greasley. Judge Greasley allowed the appeal solely under Article 8 of the European Convention on Human Rights.

Consideration of the merits

3. It seems that the Immigration Judge heard argument at the hearing as to the need to bear in mind the requirements of the Immigration Rules before reaching his decision. However, he does not appear to have gone on and considered those requirements in the context of the case before him. His decision gives the impression that he had free discretion to allow the appeal on the basis of Article 8 of the European Convention without regard to the appellant's failure to meet the requirements of those rules. The correct approach, as has been explained by Ms Isherwood during the course of the hearing before me, is contained in recent case law. In particular, I was referred to the case of **Patel** [2012] UKSC 0207 and the case of **Oludoyi** [2014] UKUT 539, a decision of this tribunal in a judicial review application. In the latter case Judge Gill pointed out, at paragraph 20, that the case law in cases such as **Nagre** or **Gulshan** does not lay down an additional test which must be surmounted before Article 8 may be relied upon but he suggests that in every case where an applicant is trying to remain in the UK on a basis not covered by the Rules the onus is on him to show why the Immigration Rules are not met and why there was a need to go beyond the Rules and examine the matter under Article 8 of the European Convention on Human Rights. Judge Gill went on to explain that if there were some feature which was adequately considered under the Immigration Rules, but which could not on any view lead to an Article 8 claim succeeding, there is no need to go any further. But that does not mean that there is an additional threshold which must be surmounted. The authorities say no more than each case has to be considered in its context but that the context requires considering the requirements of the Immigration Rules.
4. The present appeal was listed for hearing on 27 January 2015. It is the respondent's appeal against that decision to allow the appeal under Article 8. The grounds of appeal are extensive and they make a number of points that have already been summarised. They came before Judge of the First-tier Tribunal Osborne on 21 January when he found the grounds to be at least arguable. He pointed out in his decision in granting permission to appeal that the correct approach is contained in recent case law. He also referred to the case of **MM** [2014] EWCA Civ 985, where the court rejected the notion that foreign nationals coming to the UK to settle could avoid the minimum income threshold requirements of the in-country sponsor. First - tier Tribunal Judge Osborne made the further valid point that the new Part 5A of the Nationality, Immigration and Asylum Act 2002 also required the

Immigration Judge to consider certain statutory requirements including the public interest in avoiding unlimited immigration into the UK and balancing the economic well-being of the UK against an individual's right to enjoy a private or family life.

5. On 10 January 2015 the appellant's solicitors indicated that they did not intend to attend the hearing before the Upper Tribunal and the appellant would not be represented therefore. The Secretary of State's cogent grounds of appeal, which have been properly argued by Ms Isherwood, clearly demonstrate a material error of law in the decision of the First-tier Tribunal in the approach to Article 8 for reasons that will be clear from the discussion above. I have therefore decided to allow the Secretary of State's appeal against the decision of the First-tier Tribunal and to remake the decision. Since there is no application before me to adduce any fresh evidence I will do so on the existing evidence before the First-tier Tribunal. There is no cross appeal against the refusal of the First-tier Tribunal to allow the appeal under the Immigration Rules. Having regard to the requirements of those Rules and bearing in mind that the appellant has only been in the UK since June 2011 there is no proper basis upon which this case can succeed solely under Article 8 outside the Immigration Rules. The Immigration Judge found that the appellant had formed a private life "in relation to (the appellant's) studies" but provided no detail to support this conclusion. The grounds of appeal to the First-tier Tribunal baldly asserted that the appellant's removal would be incompatible with his human rights but in truth the appellant could continue his private life in Bangladesh where he has spent most of his life. Accordingly, I substitute the decision of this Tribunal which is to dismiss the appellant's appeal against the decision of the Secretary of State to refuse further leave to remain.

Notice of Decision

I find that there was a material error of law in the decision of the First-tier Tribunal. The appeal by the Secretary of State is allowed. The Upper Tribunal will re-make that decision, which is to dismiss the appellant's appeal against the decision of the Secretary of State to refuse further leave to remain.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Hanbury