



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

Appeal Number IA/43467/2014

THE IMMIGRATION ACTS

Heard at Centre City House
Birmingham
On 28th May 2015

Decision and Reasons Promulgated
On 10th June 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

MOHI UDDIN AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Sawar (Counsel, instructed by Kays Solicitors)

For the Respondent: Mr N Smart (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. In this determination the term Appellant applies to the Appellant before the First-tier Tribunal and Respondent refers to the Secretary of State. This is to avoid confusion and to maintain consistency in the application of the different terms.
2. The Appellant came to the UK in 2010 on a Tier 4 (General) Student visa which was subsequently extended resulting in leave to remain until the 3rd of June 2015. However his college lost its approval and accordingly the

Appellant's leave was curtailed leaving him with 60 days in which to find another sponsor college where he could complete his studies.

3. The Appellant did not make an application under Tier 4 to continue his studies but instead applied to remain as the dependent of a Tier 1 (Entrepreneur). That application was refused as the Appellant could not show he had held the required funds for 90 days as demanded by the rules. On that basis his appeal was also dismissed in the decision of First-tier Tribunal Judge McDade promulgated on the 26th of January 2015.
4. The Appellant's appeal was allowed by the Judge on the basis that his situation was sufficiently exceptional and compelling that his removal would be disproportionate under article 8 of the ECHR. The reasons are given at paragraph 4 of the decision. It was observed that the Appellant could have, but unwisely, did not make a further application under Tier 4 and that as a Tier 1 dependent he could still study. The Judge found that with the financial requirements for the Tier 1 dependent application being more onerous it was arguably prejudicial to an individual who had received a notice of curtailment to arrange for the requisite sums to be in his bank account.
5. The Respondent sought permission to appeal on the basis of grounds of the 2nd February 2015. In short it was argued that the Judge had not given adequate reasons why the Appellant's circumstances were exceptional. There were reasons for the different financial requirements between a Tier 1 and Tier 4 application and it was not to be considered an exceptional factor. It was also argued that the Judge had misapplied sections 117A and 117B.
6. Permission to appeal was granted by Judge Cruthers on the 9th of March 2015. He did so observing that it was arguable that the Judge may not have identified any exceptional circumstances and had not demonstrated how the public interest had been outweighed.
7. At the hearing the Appellant was represented. The submissions of the parties are set out in the Record of Proceedings and referred to where relevant below. The Home Office relied in particular on the case of Patel [2013] UKSC 72 and observed that the quote from paragraph 55 had not been taken in full. The Appellant had had 60 days to enable him to find another college. Considering section 117B the fact of his finances and English language ability were neutral and not positive factors. For the Appellant it was noted that the Appellant had the required maintenance and that the Judge had had regard to the Appellant's family life and that the interference would be disproportionate.
8. At the hearing it was indicated that I found that the decision of the First-tier Tribunal Judge contained an error of law and that it would be set aside, remade and dismissed. The reasons for that decision are given below.

9. It was clearly not the fault of the Appellant that his college's licence was withdrawn leaving him without a place at which to study. For that reason he was given 60 days to obtain a new CAS, that met the requirement of fairness that arises in such circumstances. If the Appellant had obtained a new CAS as the Secretary of State allowed him to do that would have been the end of the matter.
10. It was the Appellant's choice to submit a different application which engaged different maintenance requirements and not something that the Secretary of State had any influence over. It has to be assumed that as the Appellant had some familiarity with the Points Based System he would have been aware of the different requirements for the application that he chose to submit. The Appellant could have submitted an application to continue studying and when he had sufficient papers to meet the requirements for a dependents application could have then submitted a further application.
11. The situation which led to the Appellant's leave being curtailed and his being granted 60 days to obtain the CAS were not of his making. The application which he chose to make was his decision alone and not dictated by the circumstances in which he found himself in. There was no basis that would justify the Judge finding that the circumstances were exceptional and effectively decided the case on a "near-miss" basis.
12. Accordingly I find that the decision of the First-tier Tribunal contains a material error of law and I set the decision aside. I remake the decision and dismiss the appeal of the Appellant on the basis that he cannot meet the requirements of the Immigration Rules relating to Tier 1 (Entrepreneur) Dependents and there are no exceptional circumstances that would justify considering his case outside the Immigration Rules and nothing that would justify allowing the appeal under article 8.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision.

I re-make the decision in the appeal dismissing the appeal of Mohi Uddin Ahmed.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In dismissing this appeal I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal Parkes (IAC)

Dated: 9th June 2015