



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

Appeal Number: IA/01576/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 18th May 2016**

**Decision & Reasons Promulgated
On 27th May 2016**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**MUHAMMAD ASIF
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Mustafa, instructed by Rana & Co Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan, born on 1st November 1976. His appeal, against the Respondent's decision to refuse leave to remain on human rights grounds and the decision to remove him under Section 47 of the Immigration, Asylum and Nationality Act 2006, was dismissed by First-tier Tribunal Judge Callow in a decision promulgated on 14th October 2015.
2. The Appellant came to the UK, aged 38 years old, on a Tier 4 (General) Student Migrant visa in 2010. He was granted further leave to remain and

in fact was awarded his ABP Post Graduate Diploma in Information Systems in August 2014. The Appellant applied for leave to remain outside the Immigration Rules. He wished to study for a masters degree but had suffered from hepatitis C and heart disease and was unable to continue his studies. The Appellant sought leave to remain outside the Immigration Rules.

3. The Respondent refused the application on the basis that variation of leave was being sought for a purpose not covered by the Rules. The Secretary of State found that there were no particularly compelling circumstances in the Appellant's case. Although he had a chronic liver condition and heart disease, treatment for his condition would be available in Pakistan. His application was refused.
4. The Appellant appealed to the First-tier Tribunal who dismissed the appeal for the following reasons:

"12. In the present appeal it has not been established that all of the circumstances of the Appellant's return are exceptional and are not sufficient to reach the high threshold under Article 3.

13. Turning to Article 8 I refer to paragraph 23 of MM (Zimbabwe) [2012] EWCA Civ 279 cited with approval by Laws LJ in GS (India) at para 87:

'The only cases I can foresee where the absence of adequate medical treatment in the country to which a person is to be deported will be relevant to Article 8, is where it is an additional factor to be weighted in the balance with other factors which by themselves engage Article 8. Suppose, in this case, the Appellant had established firm family ties in this country, then the availability of continuing medical treatment here, coupled with his dependence on the family here for support, together establish 'private life' under Article 8. That conclusion would not involve a comparison between medical facilities here and those in Zimbabwe. Such a finding will not offend the principle expressed above that the United Kingdom is under no Convention obligation to provide medical treatment here when it is not available in the country to which the Appellant is to be deported.

14. A specific case has not been made out under Article 8. The facts do not establish the rigour of the D exception, and the fact of having come to the UK as a student to obtain qualifications does not of itself engage Article 8. There is no private right to be educated in the UK: Patel and Others [2013] UKSC 72; at paragraph 57 which states:

'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 Lord Justice Sedley'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. 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'."

5. Permission to appeal was granted by First-tier Tribunal Judge Hollingworth on the grounds that it was arguable the judge's finding that the fact of having come to the UK as a student to obtain qualifications did not of itself engage Article 8, was insufficient in considering the totality of the factors in the case, given the evidence presented to the judge, as to the course of events after the Appellant had arrived in the UK in relation to his medical history.
6. In submissions, Mr Mustafa submitted that the judge had not considered Article 8. He accepted that there was no violation of Article 3 but that the judge should have looked at Article 8 in more detail rather than just discounting it. He relied on the case of MM and Akhalu (health claim: ECHR: Article 8) [2013] UKUT 400 (IAC).
7. The judge erred in finding that the Appellant had failed to establish private life in the UK and in failing to go on to consider proportionality. The Appellant's medical condition gave rise to private life in the UK. He had finished his course and was unable to embark on a masters degree because he was ill. There were serious consequences giving rise to an interference because the Appellant would have to return to Pakistan and start the investigations into his medical condition all over again.
8. The Appellant's private life did engage Article 8 and the judge had failed to consider his medical circumstances in assessing such a private life. This case was similar to that of Akhalu which had succeeded on Article 8 grounds. In this case the judge should have gone on to assess proportionality but he never did.
9. Mr Tufan submitted that the Appellant relied on two limbs in relation to his private life. Firstly that he had been unable to complete his education and secondly his medical condition. He relied on the case of GS (India) and Others v Secretary of State for the Home Department [2015] EWCA Civ 40, in particular the last sentence of paragraph 111 which states: "it is not easy to think of a foreign healthcare case which would fail under Article 3 but succeed under Article 8". The absence of inadequacy of medical treatment could not be relied on as a factor engaging Article 8.

10. The Appellant's circumstances were nowhere near as serious as those in DS and all cases were dismissed. Further Article 8 cases in relation to students did not engage Article 8. CDS has been disgraced by the Supreme Court in Patel at paragraph 57. The Appellant had no right to continue or complete his education in the UK. There was no arguable error of law because Article 8 was not engaged in this case.
11. Mr Mustafa submitted that, had the judge considered the Appellant's studies and his medical condition, taken together, they were sufficient to show that he had established private life in the UK such that Article 8 was engaged. Had the judge considered proportionality he would have decided it in the Appellant's favour because the Appellant had come to the UK to study but had been unable to do so because of his medical condition. The Appellant had a right to stay in the UK to complete his health treatment and his study. When all factors were considered together they came down in the Appellant's favour who should have been granted leave to remain.

Discussion and Conclusions

12. The Appellant came to the UK as a student in 2010. He completed his postgraduate diploma and it was his ambition to do a masters degree but he was unable to start it because he suffered from hepatitis C and heart disease. The Appellant's student leave expired and he applied for discretionary leave because he wished to continue his studies after completion of his treatment.
13. It was accepted that the Appellant's removal and the refusal of leave did not breach Article 3 and there was no challenge on those grounds. I am of the view that the Appellant's ability to continue his studies does not engage Article 8. He had completed his post graduate diploma and was seeking further leave to remain to embark on a further course, a masters degree. This is insufficient to engage Article 8.
14. The Appellant's right to remain in the UK to receive medical treatment also failed to engage Article 8 because it was quite clear from the case law relied on by the judge, namely MM (Zimbabwe) [2012] EWCA Civ 279 and GS (India) that there had to be other factors to take into account. In this case there was not an absence of adequate medical treatment in Pakistan, although there was medical evidence that treatment was not readily available, and the Appellant would be returning there to the support of his family. Article 8 did not give the Appellant a right to study or a right to receive medical treatment in the UK.
15. It would appear from the grounds of appeal, at paragraph 5, that the submission is being made that it was in the public interest to find out why the Appellant's medical treatment had caused his heart disease. This evidential situation had simply not been made out and did not engage Article 8 in any event.

16. Although the judge's decision was brief, he had given adequate reasons. The circumstances that the Appellant finds himself in were insufficient to show that interference with his private life would have consequences of such gravity so as to engage Article 8.
17. The Appellant wished to remain in the UK to continue medical treatment and undergo investigation into his condition. His application was not covered by the Immigration Rules and did not engage Articles 3 or 8. Treatment was available in Pakistan and the Appellant had completed his post graduate diploma.
18. The interference with the Appellant's studies and medical condition were insufficient to prevent the Appellant from continuing his private life in Pakistan. I find that there was no material error of law.
19. The Appellant's claim was not sufficient to engage Article 8, but even if it was then the public interest outweighed the Appellant's Article 8 rights. In Akhalu, the Tribunal held, "The consequences of removal for the health of a claimant who would not be able to access equivalent health care in the country of nationality as was available in this country are plainly relevant to the question of proportionality. But, when weighed against the public interest in ensuring the limited resources of this country's health service are used to the best effect for the benefit of those for whom they are intended, those consequences do not weigh heavily in the claimant's favour but speak cogently in support of the public interest."
20. The Appellant's medication and investigation into his condition did not add weight to the public interest as submitted at paragraph 5 of the grounds of appeal. The Appellant had a hereditary condition and hepatitis medication may well have exacerbated that condition. There was insufficient evidence before the First-tier Tribunal to show that the Appellant's presence in the UK required him to remain to continue investigations for the benefit of others and therefore his presence was not relevant to the public interest. The evidence before the judge did not support the submission and the judge's failure to consider it was not material.
21. I find that there was no arguable error of law in the judge's conclusion that a specific case had not been made out under Article 8. The Appellant's private life in the UK was limited and the interference with his private life did not give rise to consequences of such gravity so as to engage Article 8. He could return and study in Pakistan and return and receive treatment in Pakistan. He had the support of his family and was not in a situation which would warrant the grant of leave on Article 8 grounds.
22. Further, there was no material error in the judge's failure to consider proportionality because on any assessment of proportionality the public

interest in the Appellant's removal and refusal of leave outweighed his right to family and private life.

23. Accordingly, I find there is no error of law in the decision promulgated on 14th October 2015 and I dismiss the Appellant's appeal.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

J Frances

Signed

Date: 26th May 2016

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

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

J Frances

Signed

Date: 26th May 2016

Upper Tribunal Judge Frances