



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

Appeal Number: IA/45334/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 November 2015**

**Decision & Reasons Promulgated  
On 29 January 2016**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**RAZA SALEEM**

(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Miss A Brocklesby-Weller, Senior Home Office Presenting Officer

For the Respondent: The Respondent did not appear and was not represented

**DECISION AND REASONS**

1. I see no need for, and do not make, an order restricting publication of the details of this appeal.
2. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter "the claimant", against the decisions of the Secretary of State on 14 October 2013 to refuse him leave to remain as a student and to remove him from the United Kingdom. The appeal was brought and allowed on human rights grounds.

3. The claimant did not appear before me today. I did not expect the claimant to come. I had had a telephone message drawing to my attention that he had been involved in a domestic accident. A full adjournment application had been considered the day before the hearing by a colleague and was renewed before me possibly with additional information.
4. There is very clear evidence that the claimant has complained to his doctor that he has injured his back in a fall at home. The injuries do not sound trivial and some of them I am sure would be very unpleasant. However there is no evidence before me that he is not fit to attend a Tribunal hearing. The opinion of the medical practitioner he is not fit to attend work is not the same at all. It follows therefore that although I have very clear evidence that he has been injured I do not have any independent evidence that he could not attend a hearing.
5. I have particularly considered a medical practitioner's letter dated 23 November 2015 which rehearses the history of the injury but which fails to say that the claimant is not fit to attend the Tribunal hearing. I note that the claimant lives in East Ham which is not very far away from the hearing centre. Attendance would not involve a long or difficult journey. I cannot conclude on the evidence that the claimant is not able to attend and I therefore see no reason whatsoever to adjourn the hearing.
6. The First-tier Tribunal was plainly wrong to allow the appeal, at least for the reasons given. It is a matter of record that the claimant cannot satisfy the requirements of the Rules. The First-tier Tribunal says as much. The difficulty is that if the application was allowed he would have been allowed to remain in the United Kingdom for more than five years as a Tier 4 (General) Student and that is not permissible. Thus there is no question of this claimant satisfying the requirements of the Rules.
7. The First-tier Tribunal Judge has decided that removing the claimant would interfere with his private and family life. I regard that as completely uncontroversial. The claimant has been in the United Kingdom since September 2007. In fairness to him it should be made plain that he has always had permission to be in the United Kingdom and requiring him to go to Pakistan against his wishes does interfere with his private and family life although I think I must also add the rider that it does not interfere very much, by which I mean it is plainly a proportionate decision.
8. The First-tier Tribunal said that this was not a case where the claimant's immigration status was precarious. This was clearly a nod to Section 117B(5) of the Nationality, Immigration and Asylum Act 2002 which requires that "little weight should be given to a private life established by a person at a time when the person's immigration status is precarious". The word "precarious" is not defined in the Rules but has been considered in the jurisprudence of the Tribunal particularly **AM (s.117B (Malawi) [2015] UKUT 0260 (IAC)** where it was found to include any person whose status in the United Kingdom was less than that of a citizen or a person with indefinite leave. The point is that such people are only able to remain

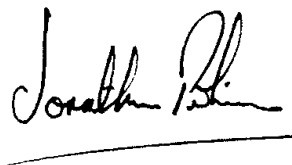
with permission if a further successful application is made. The claimant plainly had a precarious status and the judge was wrong to rule otherwise.

9. It follows therefore that little weight should be given to his private life but even without the help of the section it is plain to me there is little weight that can be given to the private and family life alleged here. This is not a case where the claimant seeks to rely on a life partner or a relationship with children or similar relationships which can, sometimes, very important in an Article 8 analysis. He is simply a person who has remained in the United Kingdom ostensibly studying.
10. I understand the First-tier Tribunal Judge's reasons for being sympathetic to the claimant. The claimant gave convincing evidence that he had been let down badly by a college on an earlier occasion. If that is right the claimant might conceivably have had a remedy against the college. That is not something I have to determine but it does not in any way affect the Secretary of State's decision.
11. It was open to the claimant to return to Pakistan and then apply to return to the United Kingdom to resume his education if that is what he wanted to do. Indeed it still is but I cannot see on any analysis of the evidence under the Rules or at all that the circumstances of this case enable the claimant to stay when the rules say that he does not qualify.
12. The claimant refers to nothing in his evidence and no finding of the judge which would justify such a conclusion.

**Notice of Decision**

13. It follows therefore that I set aside the decision of the First-tier Tribunal which was based on an erroneous understanding of the law and I substitute a decision dismissing the claimant's appeal against the Secretary of State's decision.

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal



Dated 29 January 2016