



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/03235/2013

THE IMMIGRATION ACTS

Decision Made on 2 September 2013
at Field House without a hearing

Determination Sent
19 September 2013

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

MR UMER FAROOQ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant appeals with permission the decision of First-tier Tribunal Judge Raymond who for reasons given in his determination dated 13 May 2013 dismissed the appeal by the appellant, a citizen of Pakistan born 18 September 1990 against the decisions of the Secretary of State dated 9 January 2013 refusing to extend the appellant's leave to remain as a Tier 4 Student and to remove him.

2. My reasons for granting permission to appeal were as follows:

“The decision by DJUT M Hall was at best declaratory; he found that the decision to curtail leave was unlawful but made no direction to give effect to his determination other than observing that the appellant ...”now has leave to remain until 28 October 2013”. It also needs to be borne in mind that the judge also found that the appellant failed to meet the maintenance requirement and that the SSHD had correctly refused under para 245ZX(d) for want of an “established presence”.

It appears that the SSHD in giving effect to the above determination granted 60 days leave and it is accepted that the application thereafter made by the appellant was without a valid CAS. It was open to the appellant to challenge (by way of Judicial Review) the decision by the SSHD in giving effect to that decision by only varying the leave until 17 July 2012 however he did not do so. I would add however that it is difficult to see how he could have succeeded in the light of the decision under 245ZX(d).

The grounds of appeal against the decision on the application for further leave to remain made 16 July 2012 do not seek to assert that valid CAS had been submitted but that the decision was unlawful in the light of DJUT Hall’s decision and under Art 8 which relies on close community bonds and that the appellant is well settled (he arrived in February 2010)

FTJ Raymond noted that of the six exams at Kaplan (the college the appellant had switched to without permission as so prompting the curtailment) between December 2011 and June 2012, the appellant had only passed one. He also noted a letter from the college indicating that his ACCA course had expired on 13 February 2012. The appellant also gave evidence that he had passed an exam in December 2012. The judge dismissed the appeal under the Rules and on Art 8 grounds.

Turning to the grounds of application, even though the judge arguably erred in not specifically reaching a conclusion on the lawfulness argument I am not persuaded that error was material as having regard to the findings by DUTJ Hall particularly with regard to para 254ZX(d) he could not have come any conclusion other than to dismiss the appeal on this ground.

As to the Art 8 arguments, although the proportionality reasoning is succinct here too and taking account of the matters in the appellant’s statement dated 19 April 2013, there was no other possible outcome and I am not persuaded there is any basis for finding an arguable material error.

The decisions by the SSHD were to refuse to vary leave and to remove. No argument was raised as to the lawfulness of the latter before the judge and surprisingly none is advanced in the grounds of application. The point goes to jurisdiction and I grant permission on this basis only. Unless I received a proposal to the contrary within 7 days from the date of the sending out this decision, I will remake the decision in the appeal to remove and allow the appeal against that decision.”

3. The Secretary of State has responded as requested indicating that she is in agreement with the proposed resolution. No oral hearing is requested.
4. There has been no response from either the appellant or his advisors. The First-tier Tribunal dismissed the appeal under the Immigration Rules and under Article 8. I set aside that decision which I now re-make. The appeal against the variation decision is dismissed, the appeal against the decision to remove the appellant is allowed.

Signed

Date 18 September 2013

Upper Tribunal Judge Dawson