



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/11088/2013

THE IMMIGRATION ACTS

Heard at Field House
On 4 October 2013
Oral Determination

Determination Promulgated
On 11th October 2013

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

AAMIR SHAHZAD

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance or representation
For the Respondent: Mr J Parkinson, Home Office Presenting Officer

NOTICE OF INVALID APPEAL AND REASONS

1. The appellant who is a citizen of Pakistan, born on 10 January 1991, appeals with permission against the determination of First-tier Tribunal Judge Holder, sitting at Newport, promulgated on 10 June 2013 in which he dismissed the appellant's appeal against the decision of the respondent to refuse to grant him further leave to remain as a Tier 4 (General) Student.

2. When the matter came before me there was no appearance by the appellant. I deferred the matter until 12:30pm by which time there was still no appearance by the appellant. I caused enquiries to be made by court staff who informed me that although they had attempted to contact the appellant using the mobile telephone number given by him, there was no response. I am satisfied from the court file that due notice of the time, date and venue of the hearing was served on the appellant at the address given by him but there is no appearance by him and no explanation for that. In all the circumstances of the case I am satisfied to deem it appropriate to proceed in the appellant's absence.
3. The appellant arrived in the United Kingdom with leave to remain as a Tier 4 Student on 21 June 2011 with leave to remain until 29 October 2012. His case is that on 24 October 2012 he submitted a valid application for further leave to remain as a Tier 4 (General) Student with a valid CAS and the required bank statements in support of the application. The respondent rejected that application on the basis that it was invalid as the payment could not be processed. The appellant then re-submitted the application on 4 February 2013 and that was again refused, on this occasion on the basis that, as the appellant was not a continuing student with an established presence in the United Kingdom, he was required but had failed to provide evidence covering the relevant period to show that he had maintenance funds of £7,200 plus any outstanding fees to be paid.
4. The appellant appealed against that decision on the basis that the Secretary of State's decision to treat his first application as invalid was not the correct one to take. It is also submitted that in any event he had provided sufficient evidence that he had the correct funds as a continuing student, on the basis that the decision to reject the first application was incorrect.
5. The Secretary of State considered that there was no valid appeal. On the basis of **Basnet (validity of the application - respondent) [2012] UKUT 00113** the First-tier Tribunal directed the respondent to serve on the Tribunal and the appellant the evidence upon which the assertion is made that the appeal is invalid, in addition to any other evidence filed in accordance with Rule 13 of 2005 Procedural Rules. The appellant was also directed to file evidence to show that his account was in funds on the relevant date.
6. The matter then came before Judge Holder who considered the matter on the papers. It appears that the court file was given to him on 29 May 2013 but his determination was not promulgated until 10 June 2013. He records in his decision that the respondent had not served the required information in response to the directions made and had not provided a bundle at all and, mindful of the decision in **Basnet**, considered that there was a valid appeal. He then went on to find at paragraph 17 that the appellant had not submitted evidence that he had either the £2,000 relevant if he were a student with established presence or £7,500 in his NatWest Bank account for a continuous period of 28 days prior to either 24 October 2012 or 4 February 2013. He then went on to dismiss the appeal under Article 8 as well.

7. The appellant then applied for permission to appeal to the Upper Tribunal on the grounds:
 - (i) that his application was valid; and
 - (ii) that he had submitted the correct evidence showing that he had the relevant funds in place and the judge failed to take that into account.
8. Permission was granted on all grounds by Upper Tribunal Judge Grubb.
9. It appears from the court file that the respondent did in fact serve a bundle on the Tribunal which is marked as "received at Newport" on 29 May 2013. It is not clear from the file why that is not before the judge but it appears that there has been an administrative error whereby it was not placed before the judge. I am satisfied that this is a procedural irregularity and it is apparent from this bundle firstly that there were bank statements from the appellant from NatWest Bank amongst other documents in support of his application. It is clear from the judge's determination that he was unaware of those documents and, owing to a procedural error, he reached a conclusion without having had regard to material evidence, capable of affecting his decision. The determination is thus unsustainable. It is therefore necessary to re-make the decision and in doing so, I consider that the entire decision has to be re-made, given the nature of the error.
10. The judge's conclusion with respect to the validity of the appeal was incorrect. As Mr Parkinson submitted, the letter which appears at Annex C1 of the respondent's bundle is a letter from the appellant in which he accepts that the reason the bank refused to honour payment to the respondent was that he had upgraded his bank account to a current account, that his bank had closed the basic account and sent him a new debit card and that he had tried to inform the UKBA of that by sending a new visa application and provided the new card details with these applications. There is no evidence before me that that was done and I consider that the Secretary of State was entitled to conclude on the facts of this case, that there had been no proper payment made
11. It appears from this letter that the Secretary of State had acted properly in rejecting the application as invalid. The facts here are entirely different from those in **Basnet**. The Secretary of State has, I consider provided sufficient evidence in the form of a letter from the appellant admitting that there were debt problems with payment and accordingly there was no procedural unfairness in this case.
12. I therefore re-make the decision on the basis that the Secretary of State has satisfied me in line with the decision in **Basnet** that the decision to reject the purported application on 24 October 2012 was correct. It follows from that that there was no valid appeal and that the Tribunal had no jurisdiction to consider it.

13. I therefore re-make the determination by recording that the Tribunal had no jurisdiction to consider the appeal and there is therefore no valid appeal pending.

SUMMARY OF DECISIONS

- 1 The determination of the First-tier Tribunal involved the making of a material error of law and I set it aside.
- 2 I remake the decision by concluding that there was no valid appeal before the First-tier Tribunal.

Signed

Date: 9 October 2013

Upper Tribunal Judge Rintoul