

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/27744/2012

THE IMMIGRATION ACTS

Heard at Birmingham
on 26th June 2013

Determination Promulgated
On 19th July 2013

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SANDEEP HEER

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person.

For the Respondent: Mr Smart – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Crawford promulgated on 3rd May 2013. Judge Crawford dismissed the appeal against the refusal of the Secretary of State to vary the appellant's leave so as to permit him to remain in the United Kingdom as a Tier 4 (General) Student Migrant under both the Immigration Rules and Article 8 ECHR.

Discussion

2. The appellant was born on the 18th February 1983 and is a citizen of India. His immigration history shows he first entered the United Kingdom on 17th January 2006 in possession of visa conferring leave to remain until 31st January 2007. He was granted further periods of leave to remain, the most recent being from 4th May 2010 until 4th May 2012 as a Tier 1 (Post-study Work) Migrant. On 4th May 2012 he made a further application for leave to remain as a Tier 4 (General) Student Migrant which was refused on 16th November 2012 as the appellant scored no points in respect of the maintenance requirements.

3. Judge Crawford noted that the appellant was required to show he had £7,200 for a consecutive 28 day period in his bank account with statements produced no earlier than thirty one days before the date of the application. The appellant provided a bank statement in his father's name from HDFC Bank and another from Punjab Gramin Bank although this latter bank is not on the list of acceptable financial institutions listed in Appendix P of the Immigration Rules. The closing date of the balance on the bank letter submitted from HDFC Bank was also 31st March 2012, more than one month prior to the application which meant such funds could not be taken into account when calculating the available maintenance.
4. Judge Crawford also noted that the funds in the HDFC bank only amounted to £2,297.11 and were insufficient in any event.
5. In relation to Article 8 the Judge refers to the Razgar test and stated he was satisfied that the refusal to the points-based system was a proportionate response commensurate with the United Kingdom's right to control immigration which did not breach the appellant's Article 8 rights.
6. The grounds of appeal, drafted by the appellant in person, only challenge the Article 8 decision claiming he has spent seven years and six months in the United Kingdom. He entered when he was 23 years of age to study and finished his degree in 2010 and asks that his rights under Article 8 be considered.
7. The case of Rodriquez [2013] UKUT 00042 is mentioned in the grant of permission to appeal. This case refers to a policy operated by UKBA since August 2009 indicating that where mandatory evidence was missing from an application an applicant should be given the opportunity to provide this. It was said to UKBA has a public law duty to give effect to this policy in all cases to which it applies. Rodriquez is subject to an appeal to the Court of Appeal as it is said to be contrary to that Court's decision in Alam and Others v Secretary of State for the Home Department [2012] EWCA Civ 960 in which the Court of Appeal said that the exclusion of new evidence introduced by the Nationality, Immigration and Asylum Act 2002 s.85A applied to all appeals made after the date that s.85A was brought into force and, in any event, the policy referred to in that case has been withdrawn.
8. The respondent's current position, as from 6th September 2012, is to be found in paragraph 245AA of the Immigration Rules which sets out specific circumstances in which the Secretary of State will refer back to an applicant for additional information. It has not been proved on the facts that this is such a case. I find the decision is lawful. The appellant produced evidence from his father from the HDFC account which did not contain the required level of funding and sought to rely upon a second account which does not meet the requirements of the Rules. It has not been proved that in dismissing the appeal on this basis the Judge legally erred.

9. In relation to Article 8 although the Judge mentions Razgar there is little analysis of the various questions to be considered in the determination and the fact it was found that the refusal under the Rules was proportionate is not the same test as to whether the decision is proportionate when balanced against the protected rights of the appellant; although the key question is whether the dismissal of the appeal on this ground was a finding open to the Judge in any event. If it is any error is not material.
10. The appellant was asked about his Article 8 rights and confirms that he has no family life in the United Kingdom. He states he has a British girlfriend who he has been going out with for one and a half years although she was not in court and there is no evidence to corroborate this claim. It is accepted that the appellant did not tell Judge Crawford about any such relationship and therefore there can be no error in any failure to deal with it. I find the appellant has not proved he has family life recognised by Article 8 in the United Kingdom.
11. In relation to his private life, he stated that he has friends, plays for a sports team, and has associates he has met through work, although again there were no details provided to the Judge. All Judge Crawford appears to have had is an indication of the time the appellant has spent in the United Kingdom.
12. Whether the grounds of appeal referred to Article 8 or not, this was an issue dealt with by Judge Crawford. On the limited evidence he had available it would have been difficult for him to carry out any form of detailed assessment. His finding that it is not been proved that Article 8 was engaged therefore appears to be a finding within the range of those open to him to make on that evidence. Having heard the appellant outline the nature of his private life and weighing this against the fact that he has only had temporary leave to remain in the United Kingdom with no legitimate expectation that it will be made permanent, the legitimate aim of workable immigration controls based upon the economic welfare of the United Kingdom, and all the facts considered with appropriate care, I find that the respondent has discharged the burden of proof upon her to the required standard to show that even if Article 8 is engaged in relation to the appellant's private life, the decision is proportionate. I therefore find Judge Crawford's dismissal of the Article 8 ECHR claim shall stand.
13. The refusal contains a direction for the appellants removal pursuant to section 47 Immigration Asylum and Nationality Act 2006 which, based upon the law in force at the date of decision, is not in accordance with the law. Judge Crawford makes no specific finding in relation to this aspect and erred in dismissing the appeal out right. I set aside the determination although the dismissal of the appellants appeal under the Immigration Rules and Article 8 shall stand as preserved findings. I substituted a decision to allow the appeal to the limited extent it is remitted to the Secretary of State for a lawful removal direction to be made.

Decision

14. The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is allowed to the limited extent it is remitted to the Secretary of State for a lawful removal direction to be made.

Anonymity.

15. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Signed.....
Upper Tribunal Judge Hanson

Dated the 15th July 2013