



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/02085/2014

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke
On 19th August 2014

Determination Promulgated
On 17th September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

NIDAL BENHACHEM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Before the Upper Tribunal the Secretary of State now becomes the appellant. However, for the avoidance of confusion, I shall continue to refer to the parties as they were before the First-tier Tribunal.

2. At the commencement of the hearing before me there was no appearance by or on behalf of the appellant. Notice of the hearing had been sent to him at his last recorded address in Nottingham on 9th July 2014 and had not been returned in the post. In these circumstances I considered that it was in the interests of justice to proceed with the hearing in the absence of the appellant applying the provisions of paragraph 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Background

3. On 11th June 2014 Judge of the First-tier Tribunal Clayton gave permission to the respondent to appeal against the determination of Judge of the First-tier Tribunal Ferguson who, in a brief determination sent out on 1st May 2014, allowed the appeal on the papers against the decision of the respondent to refuse further leave to remain as a Tier 4 (General) Student Migrant in accordance with the points-based system.
4. Judge Clayton noted that the grounds asserted that the judge had considered evidence which was not submitted in support of and at the time of making the leave application contrary to the requirements of Section 85A(4)(a) of the Nationality, Immigration and Asylum Act 2002.
5. The appellant's application to the respondent had been made on 30th October 2013 yet the judge had referred, in paragraph 4 of the determination, to an affidavit, a bank statement and a family record book all of which had been submitted after the application had been made. In reaching the conclusion that the appellant satisfied the requirements of the Rules the judge had taken all of this evidence into consideration when it was not admissible.
6. Mr McVeety confirmed that the respondent relied upon the grounds reminding me that the decision of the Court of Appeal in *Raju and Ors* [2013] EWCA Civ 754 made it clear that the concept of a continuing application under the Rules was wrong and that an application was made when paragraph 34G of the Rules states it is made.
7. After considering the matter for a few moments I announced that I was satisfied that the determination showed a material error on a point of law such that it should be re-made. That is because the brief determination shows that the judge allowed the appeal because of information provided by the appellant well after his application was made contrary to the provisions of section 85A of the 2002 Act. On that basis the application had been properly refused by the respondent.

Re-making the Determination

8. Mr McVeety urged me to re-make the appeal by dismissing it as the decision of the respondent on 16th December 2013 was right. In that decision the respondent had awarded no points to the appellant for maintenance (funds) as he had failed to show that he was in possession of the total of £11,200 required for a consecutive 28 day period to meet the requirement for living costs of £1,600 and outstanding course fees of £9,600. The bank evidence submitted only showed a balance of £390.45 during the relevant 28 day period from 3rd October 2013 to 30th October 2013.
9. I informed Mr McVeety that I would dismiss the appeal. That was because I was satisfied that the subsequent evidence submitted by the appellant did not fall within

the exceptional provisions of Section 85A(4) of the 2002 Act because the evidence subsequently produced by the appellant was not adduced to prove that a document was genuine or valid or that it related to grounds other than those specified in sub-Section (3)(c) of the Section. The appellant had produced evidence relating to funds held overseas by the appellant's mother. To be admissible such evidence should have been produced at the time of application but was not.

10. The grounds of appeal before the First-tier Judge pointed out that the appellant had been studying in the United Kingdom for five years and, if returned to Morocco, would waste the money he had paid for his education. These comments do not, however, give rise to an arguable Article 8 claim based on private life. But even if they did I have regard to the provisions of paragraph 117B of the 2002 Act (inserted by Section 19 of the Immigration Act 2014) which requires me to give little weight to private life established by a person at a time when his immigration status was "precarious". In this case the appellant had leave as a student for the limited purpose of continuing his education.

DECISION

The determination of the First-tier Tribunal shows an error on a point of law such that it should be re-made. I re-make the determination by dismissing it on immigration and human rights grounds.

Anonymity

The First-tier Tribunal did not make an anonymity order nor do I consider one to be appropriate, now.

Signed

Date

Deputy Upper Tribunal Judge Garratt

TO THE RESPONDENT **FEE AWARD**

As I have dismissed the appeal there can be no fees order.

Signed

Date

Deputy Upper Tribunal Judge Garratt