



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/17416/2012

THE IMMIGRATION ACTS

Heard at Field House, London  
On 6 January 2015

Determination Promulgated  
On 20 January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

UMAR ZAMIR

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: no appearance and no representative

For the Respondent: Mr P Nath, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, a national of Pakistan, appealed to the First-tier Tribunal against the decision of the Secretary of State to refuse his application for leave to remain as a Tier 4 (General) Student Migrant and to remove him from the UK. First-tier Tribunal Judge Fox dismissed the appeal and the appellant now appeals with permission to this Tribunal.
2. There was no appearance by or on behalf of the appellant at the hearing before me. I was satisfied that the appellant had been notified of the hearing and that no reasons had been given for his absence. As I considered that there was

sufficient information on the file to determine the appeal so I decided that it was in the interests of justice to proceed with the hearing in the absence of the appellant in accordance with Rule 38 of the Tribunal Procedure (Upper Tribunal) Immigration Rules 2008.

### Error of Law

3. The background to this appeal is that on 22 October 2011 the appellant was granted leave to enter the UK as a student until 2 March 2012. On 1 March 2012 he applied for leave to remain as a Tier 4 Student. The respondent refused the application on 13 July 2012. The appellant sought an oral hearing of the appeal in the First-tier Tribunal and a hearing was listed for 17 September 2014. However the appellant did not attend the hearing and the First-tier Tribunal Judge was satisfied that the appellant had been notified of the hearing and he went on to determine the appeal on the papers and dismiss the appeal.
4. However the grounds of appeal to the Upper Tribunal contend that the appellants solicitors notified the First-tier Tribunal on 9 September 2014 that the appellant wished to have his appeal determined on the papers and submitted a bundle of evidence for consideration. The representatives submitted a copy of the letter and bundle and recorded delivery slip. On the basis of this evidence I accept that the letter and documents were sent on 9 September 2014 and delivered to the hearing centre on 10 September 2014. I accept that it is clear from the First-tier Tribunal Judge's determination that the letter and bundle were not linked to the file and that he did not therefore consider them. In these circumstances I find that, although the First-tier Tribunal Judge was unaware of it, there was a procedural error which was capable of making a material difference to the outcome or the fairness of the proceedings. For this reason I set the First-tier Tribunal Judge's decision aside and I remake the decision on the basis of the evidence before me.

### Remaking the decision

5. According to the Reasons for Refusal letter the appellant was not awarded the required 10 points for maintenance (funds) for two reasons. The first was that he had not shown that the third party sponsor (Muhammad Zameer) is his father as claimed by providing a birth certificate as set out in the guidance. Secondly he had not shown that he had £6400 for a consecutive period of 28 days before the application which was required to meet the Tier 4 (General) Student maintenance requirements. The appellant must show that he had £6400 for 28 days before he made the application on 1 March 2012.
6. Mr Nath submitted that the appellant had still not established that he met the requirements. In particular the bank statements submitted are in Pakistani Rupees and there is no evidence as to what the funds equate to in sterling. Further, he submitted that the appellant has still not provided evidence to establish that the sponsor is his father as claimed.

7. In his witness statement the appellant says that the bank statement shows Rs 9,237,535.00 which is equal to approximately £54000. However the bank statement provided, which is the same as that submitted to the respondent with the application, shows that the closing balance on 28 February 2012 was in fact Rs 4,180,191.00 which, according to the Oanda currency converter as of today's date is equivalent to £27,350.60. The appellant is therefore unclear as to how much money his father has in his account.
8. Further, as pointed out in the Reasons for Refusal letter, the bank account provided shows that the funds in the account dropped to Rs 489,291 on 17 February 2012 which is equivalent to £3,201.39 today according to the Oanda currency converter. This means that the appellant cannot show that he was in possession of the required £6400 for a consecutive period of 28 days before the date of application.
9. In any event the only evidence submitted to establish the relationship is the same as that submitted to the respondent with the application. It is an affidavit from Muhammad Zameer dated 29 February 2012 stating that the appellant is his son. This is insufficient to establish that the appellant is in fact Muhammad Zameer's son as required.
10. The appellant has not therefore demonstrated that he meets the requirements of the Immigration Rules.
11. In his witness statement the appellant said that he has established a private life in the UK and he relied on the decision in CDS (PBS: "available": Article 8) Brazil [2010] UKUT 305 (IAC). The appellant cannot meet the requirements for the establishment of a private life set out in paragraph 276ADE of the Immigration Rules.
12. The Supreme Court considered the issue of Article 8 and students in the case of Patel and Others v Secretary of State for the Home Department [2013] UKSC 72 where Lord Carnwath said;

"57. It is important to remember that Article 8 is not a general dispensing power. It is to be distinguished from the Secretary of State's discretion to allow leave to remain outside the rules, which may be unrelated to any protected human right. The merits of a decision not to depart from the rules are not reviewable on appeal: section 86(6). One may sympathise with Sedley LJ's call in Pankina for 'common sense' in the application of the rules to graduates who have been studying in the UK for some years ... However, such considerations do not by themselves provide grounds of appeal under Article 8, which is concerned with private or family life, not education as such. The opportunity for a promising student to complete his course in this country, however desirable in general terms, is not in itself a right protected under Article 8."
13. That case was considered by the Upper Tribunal in Nasim and others (Article 8) [2014] UKUT 00025 (IAC). The Tribunal said;

“20. We therefore agree with Mr Jarvis that [57] of Patel and Others is a significant exhortation from the Supreme Court to re-focus attention on the nature and purpose of Article 8 and, in particular, to recognise its limited utility to an individual where one has moved along the continuum, from that Article's core area of operation towards what might be described as its fuzzy penumbra. The limitation arises, both from what will at that point normally be the tangential effect on the individual of the proposed interference and from the fact that, unless there are particular reasons to reduce the public interest of enforcing immigration controls, that interest will consequently prevail in striking the proportionality balance (even assuming that stage is reached).

21. In conclusion on this first general matter, we find that the nature of the right asserted by each of the appellants, based on their desire, as former students, to undertake a period of post-study work in the United Kingdom, lies at the outer reaches of cases requiring an affirmative answer to the second of the five "Razgar" questions and that, even if such an affirmative answer needs to be given, the issue of proportionality is to be resolved decisively in favour of the respondent, by reference to her functions as the guardian of the system of immigration controls, entrusted to her by Parliament.”

14. In this case the appellant has done no more than assert that he has a private life such as entitles him to be granted leave to remain to continue with his studies. The appellant has provided no evidence as to the nature and extent of any private life established in the UK. I note that he has been here for a short period; most of the time has been whilst he has been pursuing this appeal. In the absence of any evidence as to his private life or how his removal would interfere with any private life I find that the decision to remove the appellant would not interfere with his private life.

Conclusion:

The making of the decision of the First-tier Tribunal did involve the making of a material error on point of law.

I set the decision aside and remake it by dismissing the appeal under the Immigration Rules and under Article 8 of the ECHR.

Signed            Date: 19 January 2015

A Grimes  
**Deputy Judge of the Upper Tribunal**