



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/18657/2013

THE IMMIGRATION ACTS

Heard at Field House
On 14 May 2015

Determination Promulgated
On 26 May 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Krushnakant Akjanbhai Vinzuda
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Ms A Vatish, instructed by Malik & Malik
For the respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Krushnakant Akjanbhai Vinzuda, date of birth 31.5.87, is a citizen of India.
2. This is his appeal against the decision of First-tier Tribunal Judge McMahon promulgated 18.11.14, dismissing his appeal against the decisions of the respondent, dated 26.10.12, to refuse his application made on 18.7.12 for leave to remain as a Tier 4 (General) Student Migrant under the Points Based System (PBS) of the Immigration

Rules, and to remove him from the UK pursuant to section 47 of the Immigration Asylum and Nationality Act 2006. The Judge heard the appeal on 28.10.14.

3. First-tier Tribunal Judge Foudy granted permission to appeal on 23.1.15.
4. Thus the matter came before me on 14.5.15 as an appeal in the Upper Tribunal.

Error of Law

5. For the reasons set out herein, I find that there was no material error of law in the making of the decision of the First-tier Tribunal such as to required the determination of Judge McMahon to be set aside.
6. There is a convoluted history to this appeal which can be summarised as follows:
 - (a) 29.12.10: Application for entry clearance as a Tier 4 (General) Student;
 - (b) 12.1.11: Granted leave to enter the UK as a Tier 4 (General) Student, expiring 27.5.12;
 - (c) 28.1.11: Entered the UK with the above leave;
 - (d) 27.4.12: Home Office notified that Regent International Graduate School no longer on the Tier 4 list of sponsors;
 - (e) 26.5.12: Application for further leave to remain in the same capacity at Westbridge College;
 - (f) 19.6.12: Home Office letter rejecting the application as invalid for want of photographs and payment. It was also pointed out that the appellant did not have a valid Confirmation of Acceptance for Studies (CAS). In consequence, the appellant's leave expired on 27.5.12 and he has had no lawful presence in the UK since that date;
 - (g) 18.7.12: Further Tier 4 (General) Student application;
 - (h) 26.10.12: Application refused on the basis that the appellant did not meet the required level of maintenance, as did not have established presence in the UK, because he had no leave to remain, and thus he required possession of a total of £7,200, which he failed to demonstrate. Because he did not have leave to remain at the date of his application he had no right of appeal against that decision;
 - (i) 8.11.12: Pre-action (Judicial Review) letter to Home Office challenging the refusal decision;
 - (j) 9.2.13: Home Office response, maintaining refusal;
 - (k) 20.1.14: Appeal allowed by First-tier Tribunal Judge Telford, on the basis that the Home Office was unable to evidence the failure to pay the fee for the

26.5.12; the parties purporting to agree that the appeal should be allowed; and the judge finding that the application attracted a right of appeal;

- (l) 6.2.14: Permission granted to the Secretary of State to appeal the decision of Judge Telford, on grounds of validity of appeal;
- (m) 11.4.14: Deputy Upper Tribunal Judge French set aside the decision of Judge Telford, noting that the question of jurisdiction and validity of the appeal to the First-tier Tribunal cannot be conferred by agreement;
- (n) 18.11.14: Decision of First-tier Tribunal Judge McMahon that the Tribunal has no jurisdiction to entertain the appeal;
- (o) 23.1.15: Grant of permission to appeal by First-tier Tribunal Judge Foudy, stating: "The judge found that the appellant had not appealed an earlier appealable immigration decision. Based upon that fact the judge decided that the appeal before him was invalid. It is arguable that the first decision was not appealable, contrary to the judge's findings. This amounts to an arguable error of law."

7. With respect to Judge Foudy, the grant of permission makes no sense and does not identify an arguable error of law. Whilst Judge McMahon was in error in considering that the first decision rejecting the application of 26.5.12 was appealable, that finding was irrelevant to the decision of 26.10.12 refusing the fresh application of 18.7.12. Whether or not the decision in respect of the first application was appealable, it remains the case that at the date of the second application of 18.7.12, the appellant had no leave and thus could have no right of appeal against the 26.10.12 refusal decision. Judge McMahon was entirely correct to conclude that the appellant had no right of appeal and that the Tribunal could not hear his appeal, whether on the basis of Immigration Rules or outside the Rules on the basis of article 8 ECHR.
8. Further, the application of 26.5.12, a copy of which is with the case file, was doomed to failure from the outset. Regardless as to whether photographs were submitted or payment made, the appellant did not have a valid CAS and the part of the application form requiring him to provide the CAS number was left blank. Indeed, as the 19.6.12 letter explained he did not acquire a valid CAS until 17.7.12.
9. It follows that even if there had been a valid application on 26.5.12 and even if the letter of 19.6.12 was an immigration decision, which it was not, the application would still have been refused and inevitably any appeal against that decision would have failed.
10. The fact is that the application was not valid, as the appellant did not comply with the payment requirement; his bank rejected the payment request. The Immigration & Nationality (Cost Recovery Fees) Regulations 2011 and the Immigration & Nationality (Fees) Regulations 2011 specify that if the fee is not paid the application is invalid. Further, the failure to complete the form correctly, citing a valid CAS

reference at section K1 also rendered the application invalid. The appellant submitted that application prior to obtaining a valid CAS.

11. The appellant does not benefit from Basnet (validity of application –respondent) [2012] UKUT 00113 (IAC), for the reasons cited at §12 of Judge French’s error of law decision, in particular that the circumstances in the present case are quite different. However, as stated above, even if he did have a right of appeal in relation to his May 2012 application and the letter rejecting the application as invalid, both the application and any appeal were doomed to failure. It follows that the appellant’s leave would still have expired in May 2012 and he would not be in any better position today in seeking to challenge the refusal decision of 26.10.12 in relation to his July 2012 application.
12. It follows that there can be no appeal against the decision of 26.10.12 and Judge McMahon was correct to find the Tribunal had no jurisdiction. The error in relation to whether the June 2012 letter was an appealable decision was not material to the outcome of the appeal.
13. Ms Vatish sought to raise article 8 grounds in the error of law hearing before me, producing a document which she claimed were the grounds of application for permission to appeal. They were not. They were in fact the original grounds of appeal to the First-tier Tribunal. The grounds of application for permission to appeal did not raise article 8 and no permission has been granted in relation to article 8 issues. The First-tier Tribunal Judge could not in any event consider article 8 grounds, as he found that there was no valid appeal before the Tribunal.

Conclusions:

14. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands. There is no valid appeal that could have been considered by the First-tier Tribunal.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I no fee award.

Reasons: There is no valid appeal.



Signed

Deputy Upper Tribunal Judge Pickup

Dated